

Inductive Components, Inc. and Local 1922, International Brotherhood of Electrical Workers, AFL-CIO. Cases 29-CA-8987, 29-CA-9241, and 29-CA-9300

6 September 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER

On 28 December 1983 Administrative Law Judge Winifred D. Morio issued the attached decision. The Respondent and the General Counsel filed exceptions and supporting briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions² only to the extent consistent with this Decision and Order.

The judge found that the Respondent had committed numerous violations of Section 8(a)(1) and (3) of the Act. Although we adopt the judge's other findings, we do not adopt her findings that the Respondent unlawfully granted employee Millian a lower wage increase than other employees and unlawfully caused employee Sciarpetletti to quit her job with the Respondent.

In July 1981 the Respondent granted wage increases of only 10 cents per hour to employees Millian, Bowers, and Underwood while granting its approximately 36 other employees wage increases from 15 to 30 cents per hour. The judge found that the Respondent granted the lower increases to Millian, Bowers, and Underwood because they had accompanied the Union's representatives when they met with the Respondent's president to demand recognition. Accordingly, the judge found that these lower wage increases violated Section 8(a)(3) and (1) of the Act.

While we adopt the judge's finding that the 10-cent-per-hour wage increases granted Bowers and Underwood were unlawful, we find that the Respondent met its *Wright Line*³ burden of showing

¹ In the absence of any exceptions thereto, Chairman Dotson adopts pro forma the judge's findings that the Respondent coercively interrogated employees Winter and Aiello on 17 April and 2 June 1981, respectively.

² The judge found that the Respondent had unlawfully reprimanded employee MacMillen for door slamming, but inadvertently neglected to include this finding in her Conclusions of Law or in that part of her recommended Order requiring the Respondent to expunge all such warnings from its record. We have modified the Conclusions of Law and Order accordingly.

³ *Wright Line*, 251 NLRB 1083 (1980).

that it would have granted Millian a 10-cent-per-hour wage increase even absent her union activity. The record clearly establishes that, unlike Bowers and Underwood, Millian was never considered a good employee. Thus on completion of her probationary period in November 1980 Millian also received only a 10-cent-per-hour salary increase, an increase lower than that received by other employees on completion of their probationary periods. At her next salary review in January 1981 Millian again received the same 10-cent-per-hour increase, the lowest amount given employees at that time.⁴ During both of these salary reviews, Millian was advised that her increase was lower than that of other employees because she lacked versatility.

Further, there is no evidence to suggest that Millian's performance subsequently improved. Indeed, all the evidence suggests just the opposite. Between her January and July 1981 salary reviews Millian received four warnings for poor work, a warning for not checking with her supervisor about her duties, and a warning and a 3-day suspension for leaving work without permission. None of these warnings or the suspension was found unlawful by the judge.

With respect to Sciarpetletti, the judge found that the Respondent's unlawful conduct in assigning her more onerous work and isolating her in a corner of the workshop because of her union activities caused her to quit. Accordingly, the judge found that the Respondent had constructively discharged Sciarpetletti in violation of Section 8(a)(3) and (1) of the Act.

We disagree. The judge's own factual findings, which are supported by the record, establish that Sciarpetletti quit because of personal problems and because of recent disciplinary actions taken against her, actions which the judge found were justified and lawful.⁵ The record is barren of any testimony or other evidence that the Respondent's unlawful conduct in assigning her more onerous work⁶ and

⁴ In contrast, Bowers received merit wage increases of 20 and 25 cents per hour and Underwood increases of 15 and 35 cents per hour at their immediately preceding two salary reviews.

⁵ Thus, in sec. VII of her decision, the judge states:

After this suspension [a 3-day suspension for harassing another employee], Sciarpetletti concluded that the Company was "setting her up," if they could not discharge her for attendance, or poor work performance, they would fabricate things about her. According to Sciarpetletti, she was then having personal problems and she could no longer face the uncertainty about her job, and she decided to resign.

⁶ Member Hunter agrees with his colleagues' conclusion that the Respondent unlawfully changed Sciarpetletti's work assignments. However, in doing so, he does not adopt the judge's finding that she was assigned to more "onerous" work. The record shows that Sciarpetletti, a skilled and competent employee, was, following her involvement in union activities, more regularly assigned to routine assembly work. This work involved tasks which were less complicated than those to which she had

Continued

isolating her in a corner of the workshop caused her to quit. Thus, insofar as its unlawful conduct did not cause Sciarpetletti to quit, and the conduct which did cause her to quit was not unlawful, we find that the Respondent did not constructively discharge her in violation of the Act.⁷

Finally, in agreement with the General Counsel we find that the judge erred in refusing to order the Respondent to make whole its employees for their lost earnings resulting from the Respondent's unlawfully lowering the average amount of wage increases granted all employees in July 1981. Contrary to the judge, we find that the amount of increase each employee would have received is not too speculative, particularly in view of the evidence of several prior wage increases already in the record. The exact amount due each employee can be determined in a compliance proceeding.

AMENDED CONCLUSIONS OF LAW

1. Substitute the following for Conclusion of Law 4(c).

"(c) By discriminatorily issuing warnings to its employees Debra Winter, Dorian Millian, Judith Bowers, Helen Underwood, and Kathleen McMillen because of their union activities."

2. Insert the following as Conclusion of Law 4(e) and delete the subsequent paragraphs.

"(e) By granting a lower wage increase to its employees Judith Bowers and Helen Underwood."

ORDER

The National Labor Relations Board orders that the Respondent, Inductive Components, Inc., Hauppauge, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Urging its employees to abandon their support for the Union.

previously been assigned and generally more typical of the work assigned a beginning or less skilled employee. While this work may have been less desirable to Sciarpetletti, the record fails, in Member Hunter's opinion, to support any finding that it was more onerous. This distinction notwithstanding, he finds, in light of the Respondent's knowledge of Sciarpetletti's union activities and its failure to advance a credible basis for the change in nature of her work assignments, that the Respondent violated Sec. 8(a)(3) and (1) when it began regularly assigning Sciarpetletti to less complicated tasks.

⁷ See *Crystal Refining Co.*, 222 NLRB 1068 (1976). In light of our finding that the Respondent's unlawful conduct was not the reason Sciarpetletti quit, we find it unnecessary to decide whether that conduct would make her situation "so physically or emotionally impossible" as to license [her] receiving the benefits of discharge while quitting." *Van Pelt Fire Trucks*, 238 NLRB 794, 802 (1978).

While Member Hunter agrees with his colleagues that the judge's factual findings show that Sciarpetletti quit for "personal reasons," he also finds for the reasons noted in fn. 6, supra, that the change in the nature of her work and working conditions was not sufficiently aggravated to force her to resign, and thus does not warrant the conclusion that she was constructively discharged.

(b) Coercively interrogating its employees about their union activities.

(c) Enforcing, on a more stringent basis, its work rules relating to the time to return from break periods, the time employees may leave their work area at quitting time, and the use of the bathroom facility, and its safety rules, because the employees engaged in union activities.

(d) Assigning its employees to more onerous work conditions because of their union activities.

(e) Assigning its employees to isolated work areas because of their union activities.

(f) Discriminatorily issuing disciplinary warnings to its employees because of their union activities.

(g) Suspending its employees because of their union activities.

(h) Granting lower wage increases to its employees Judith Bowers and Helen Underwood because they participated in the demand for recognition of the Union and for their other union activities.

(i) Changing the manner in which it gave wage increases to its employees because of their union activities.

(j) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other activities together for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

2. Take the following affirmative action designed to effectuate the policies of the Act.

(a) Expunge from all its records any reference to the unlawful suspension of Dorian Millian.

(b) Expunge from all its records the warnings issued to Dorian Millian, Judith Bowers, and Helen Underwood which relates to their use of the bathroom facility.

(c) Expunge from all its records the warnings issued to Judith Bowers concerning safety rules and the warnings issued to Debra Winter and Kathleen MacMillen for door slamming.

(d) Make whole Dorian Millian for any loss of pay or benefits she may have suffered by reason of the Respondent's suspension of her in the manner provided in the section of the administrative law judge's decision entitled "The Remedy."

(e) Make whole Judith Bowers and Helen Underwood for any loss of earnings they may have suffered by reason of the failure to pay these employees the 15-cent-an-hour increase in July 1981, with interest.

(f) Make whole its employees for any loss of earnings they may have suffered as a result of the

change in the manner in which it gave wage increases in July 1981, with interest.

(g) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(h) Post at its Hauppauge, New York facility copies of the attached notice marked "Appendix."⁸ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(i) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint allegations not specifically found are dismissed.

⁸ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT urge employees to abandon their support for the Union, Local 1922, International Brotherhood of Electrical Workers, AFL-CIO.

WE WILL NOT coercively interrogate employees about their union activities.

WE WILL NOT enforce work rules relating to the time to return from break periods, the time employees may leave their work area at quitting time, and the use of the bathroom facility, or safety rules, on a more stringent basis, because employees engaged in union activities.

WE WILL NOT assign employees to more onerous work conditions because of their union activities.

WE WILL NOT isolate from other employees those employees who support the Union.

WE WILL NOT issue disciplinary warnings to employees because of their union activities.

WE WILL NOT grant lower wage increases to employees because of their union activities.

WE WILL NOT change the manner in which we grant wage increases to employees because of their union activities.

WE WILL NOT discourage membership in, or activities on behalf of, Local 1922, International Brotherhood of Electrical Workers, AFL-CIO, or any other labor organization, by suspending employees because of their activities on behalf of the Union or by otherwise discriminating in regard to their hire or tenure of employment or any terms or conditions of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole Dorian Millian for any earnings she may have lost by reason of our suspension of her, with interest.

WE WILL make whole Judith Bowers and Helen Underwood for any earnings they may have lost by reason of our failure to pay them a 15-cent-an-hour increase in July 1981, with interest.

WE WILL make whole our employees for any loss of earnings they may have suffered as a result of the change in the manner in which we gave increases in July 1981, with interest.

WE WILL expunge from the records of Dorian Millian any reference to her unlawful suspension and advise her in writing that this action has been taken.

WE WILL expunge from the records of Dorian Millian, Judith Bowers, Debra Winter, Helen Underwood, and Kathleen MacMillen the disciplinary warnings issued to them because of their union activities and advise them in writing that this action has been taken.

You are free to become members of Local 1922, International Brotherhood of Electrical Workers, AFL-CIO, or any other labor organization.

INDUCTIVE COMPONENTS, INC.

DECISION

STATEMENT OF THE CASE

WINIFRED D. MORIO, Administrative Law Judge. This case was tried before me on April 26-29, May 4-7, June 21-25 and 28-30, July 1, 6-9, and 12-14, and August 12-13, 1982, pursuant to a complaint in Case 29-CA-8987 and a consolidated complaint in Cases 29-CA-9241 and 29-CA-9300 issued by the Regional Director for Region

29 on August 7, 1981, and December 29, 1981. These complaints were based on charges filed by Local 1922, International Brotherhood of Electrical Workers, AFL-CIO (Local 1922 or Union) against Inductive Components, Inc. (Respondent or Company) on June 29, 1981, October 14, 1981, and November 13, 1981, respectively. The complaint in Case 29-CA-8987 alleges, in substance, that Respondent harassed its employees because of their activities on behalf of the Union, by subjecting them to closer supervision; by assigning its employee, Penny Sciarpelletti, to more arduous and less agreeable job tasks; by suspending Sciarpelletti about June 5, 1981; and by issuing a written disciplinary warning to Sciarpelletti about June 17, 1981. This complaint was amended to add alleged coercive interrogations by Gregory Gloumakoff on April 17, 1981, and Bernard Jansen on June 2, 1981. It was further amended to add an allegation that disciplinary warnings were issued to Debra Winter and Penny Sciarpelletti on April 17 and June 17, 1981, respectively, because of their union activities.

The consolidated complaints in Cases 29-CA-9241 and 29-CA-9300 allege, in substance, that Respondent harassed its employees because of their activities on behalf of the Union in the following manner: since about April 17, 1981, subjecting them to closer supervision; since about the end of April 1981 by a strict enforcement of rules relating to work performance: talking on the job, hair styles, work breaks, receipts of vacation pay, and use of bathroom facilities; since about June and July 1981, exact date unknown, by assigning its employees Dorian Millian, Carol Potts, and Judith Bowers to more arduous and less agreeable job tasks; by increasing the number of verbal and written disciplinary warnings it issued to its employees; by assigning its employees Dorian Millian and Penny Sciarpelletti to less desirable work locations; by giving its employees lower pay raises than previously had been the company practice; by granting its employees Judith Bowers and Helen Underwood lower pay raises; by suspending its employees, Dorian Millian and Penny Sciarpelletti on April 17 and September 28, 1981, respectively, for 3-day periods; by discharging its employees Carol Potts and Helen Underwood; by causing the termination of its employees, Dorian Millian, Judith Bowers, and Penny Sciarpelletti on August 31 and October 2, 1981; and by refusing to rehire its employee, Judith Bowers. During the hearing these complaints were amended to add the following allegations: Respondent threatened to discharge its employee, Dorian Millian, in January 1981; subjected Millian to closer supervision between January and August 1981; issued several disciplinary warnings to Millian between January and April; suspended Millian in April 1981 and issued a written warning to her; granted Millian a lower pay raise in July 1981; refused to transfer Debra Winter for discriminatory reasons and thus caused her discharge; and assigned its employee, Helen Underwood, more arduous and less agreeable job duties. Counsel for the Respondent objected to the amendments of the complaint. The motion to amend the complaint was granted during the hearing insofar as it related to warnings issued to Millian in July 1981 and the assignment of Under-

wood to more onerous duties.¹ The motion to amend the complaint, insofar as it related to Winter, was not granted during the hearing, pending certain actions by the Regional Director. The motion to amend, with respect to Winter, is granted, as is the motion to amend the complaint with respect to certain warnings issued by Respondent to Millian between January and April 6, 1981.² The answers filed to these complaints, as amended, basically deny the commission of the alleged unfair labor practices.

All parties were given a full opportunity to participate in the proceedings, to cross-examine witnesses, to argue orally, and to file briefs. Briefs were filed by counsel for the General Counsel and for the Respondent.

On the entire record in the case and on my observation of the demeanor of the witnesses, and after careful consideration, I make the following

FINDINGS OF FACT

I. JURISDICTION

Inductive Components, Inc. (Respondent or Company), a New York corporation with an office and place of business in Hauppauge, County of Suffolk, State of New York, is engaged in the manufacture, sale, and distribution of electrical components and related products. Annually Respondent, in the course and conduct of its business, purchased and caused to be transported and delivered to its Hauppauge facility, electrical wire and other goods and materials valued in excess of \$50,000, of which goods and materials in excess of \$50,000, were transported and delivered to its Hauppauge plant in interstate commerce directly from States of the United States other than the State of New York. The parties admit, and I find, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION

The parties admit, and I find, that Local 1922, International Brotherhood of Electrical Workers, AFL-CIO (Local 1922 or Union) is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. RESPONDENT'S TABLE OF ORGANIZATION

Bernard Jansen, president; David Loughlin, manufacturing manager; Richard Clifford,³ personnel director; Marge Lines, production supervisor; Gregory Gloumakoff, night supervisor; Diane Gloumakoff, officer manager; Lorraine Hampton, officer manager; Ella Parisi, as-

¹ During the hearing, counsel for the General Counsel stated that she would withdraw her amendment with respect to the more onerous working conditions.

² The matters covered by the amendment were fully litigated.

³ Clifford had been marketing manager until April 3, 1981, when he assumed the duties of Nicholas Gloumakoff, who had been a director of the Company and personnel manager. Gloumakoff resigned on April 3, 1981, but he continued to own some shares of stock in the Company at the time of the hearing.

sistant production supervisor; and Jeannette Rissman, assistant production supervisor.

The parties stipulated that Bernard Jansen, David Loughlin, Richard Clifford, Gregory Gloumakoff, and Marge Lines were supervisors within the meaning of Section 2(11) of the Act. The status of Diane Gloumakoff and Lorraine Hampton were not agreed to but, for reasons set forth below, their status is not an issue in this case. Ella Parisi was the assistant to Marge Lines and it appears from this record that Parisi possessed some of the indicia of supervisory status. Parisi testified as a witness for the General Counsel and, basically, supported the testimony of other witnesses for the General Counsel. Jeannette Rissman became Lines' assistant after Parisi was transferred to another position in August 1981. It appears that she also possessed some of the indicia of supervisory status. Parisi was transferred to another position after Lines expressed dissatisfaction to Jansen about her performance. In addition, Lines had suggested that Parisi's daughter be discharged because Lines did not consider her work performance to be satisfactory.

IV. BACKGROUND

In the summer of 1979, Meatcutters Local 341 (Local 341), attempted to organize Respondent's employees. These efforts resulted in a stipulation for an election being executed between Local 341 and Respondent in January 1980. Pursuant to the stipulation, an election was held in March 1980. Local 341 lost the election and filed objections. The Board found one objection to have merit and it directed that a second election be held. The second election was scheduled to be held on January 14, 1981, but prior to the scheduled date, Local 341 withdrew its petition. During Local 341's organizing campaign several employees were involved actively in the campaign against unionization. The two employees who were most vocal in their opposition were Marge Lines and Penny Sciarpetletti.⁴ Sciarpetletti, an alleged discriminatee in the present case, testified that Jansen, the company president, assisted the employees, during the Local 341 campaign, to draft antiunion literature.

V. THE UNFAIR LABOR PRACTICE

A. Local 1922's Campaign

Dorian Millian, one of the alleged discriminatees, contacted a Local 1922 representative on April 6 or 7, 1981.⁵ On April 13, through Millian's efforts, Local 1922 representative met with Millian and other employees, Debra Winter, Kathleen MacMillen, Helen Underwood, Margaret Liebla, and Judy Bowers. During this meeting authorization cards were distributed and signed.⁶ Al-

though there was some testimony that an employee, Roni Welker, considered to be promanagement, was at one of the early meetings, the record does not establish that she was present at the April 13 meeting. A second meeting was held on April 16 with basically the same employees present as were present at the first meeting.⁷ During the next few days the efforts to organize continued and on April 27 Millian, Bowers, and Underwood, together with Local 1922 representatives, met with Bernard Jansen and demanded recognition, which he refused. Thereafter Local 1922 filed a representation petition in Case 2-RC-5396. As a result of the petition, Local 1922 and Respondent executed a stipulation for certification upon consent on May 8. The election was held, as scheduled, on June 3. The Union won the election and Respondent filed objections which were overruled. Local 1922 was certified as the collective-bargaining representative on October 28 and thereafter, the parties commenced negotiations which lead to execution of a collective-bargaining agreement on March 16, 1982.

Counsel for the General Counsel contends that the most active union adherents were Dorian Millian, Penny Sciarpetletti, Judy Bowers, Helen Underwood, Carol Potts, Debra Winter, and Kathleen MacMillen. The Respondent engaged in a campaign of discrimination against these individuals, according to counsel for the General Counsel. In addition, with respect to all employees, the General Counsel contends that Respondent acted discriminatorily by a stricter enforcement of work rules and by granting a wage increase in July which was lower than increases generally given to employees.

According to counsel for the General Counsel, the Respondent became aware of the union activities of its employees at least by April 14, 1983, as evidenced by statements made on that day to Debra Winter by night supervisor, Gregory Gloumakoff. In addition, she claims that other statements attributed to Gloumakoff on April 17 also indicate his awareness of the employees' union activities. As noted, with respect to Millian, Bowers, and Underwood, it is undisputed that Respondent was aware of their union sympathies on April 27, 1981.

B. The Alleged Gloumakoff Incident

Debra Winter testified that on April 14 Gregory Gloumakoff told her he was angry with her but he refused to give her an explanation for his anger. As a result of this comment Winter, together with Millian and MacMillen, decided to approach Gloumakoff on April 17, 1981, to discuss the problem with him.

The record reveals that of the four individuals involved in this April 17 incident, only Millian and Winter testified. Their versions do not agree. Millian testified that Gloumakoff told the group that he thought it was Sciarpetletti who was responsible for the Union because she had been denied her leave of absence. In addition, according to Millian, Gloumakoff accused Winter of dis-

⁴ At the time neither employee was a supervisor but Lines became the production supervisor in the summer of 1980. The General Counsel stated that the promotion was a reward for Lines' opposition to Local 341. Assuming this to be true, the General Counsel failed to explain why Sciarpetletti, who not only opposed the Union but was the Company's observer at the election, also was not rewarded with a promotion or some other benefit.

⁵ All dates refer to 1981 unless otherwise stated.

⁶ It does not appear that Local 1922 received a majority of cards.

⁷ Sciarpetletti was present at this meeting.

tributing the authorization cards and soliciting employees to sign them.⁸

C. Jansen's Meetings in April and May

Bernard Jansen testified that when the Meatcutters campaign started in mid-1980 he was advised by his labor consultant that it would be necessary to have a more formalized policy concerning work rules and other conditions of employment. He began to prepare an employee handbook with the assistance of the consultants in the fall of 1980 but preparation on the book was interrupted because of the Meatcutters election and the work on it did not begin until January or February 1981. The handbook basically was a codification of existing conditions, although there were some new conditions, relating to jury duty and bereavement.⁹ Meetings were held with employees on April 28 or 29 during which the handbook was distributed and discussed. Jansen claimed that during the discussion about the handbook, Millian demanded to know why she had been suspended for leaving work without permission on April 3, when the other employees had received warnings.¹⁰ Jansen attempted to return the discussion to the handbook but, according to Underwood, the employees persisted in questioning him about Millian's suspension and at that point, Jansen said the other employees did their work but Millian was a "troublemaker." According to the employee witnesses, Jansen also expressed his dislike for Unions and told the employees that they did not need a Union. Sciarpetletti testified that Jansen told the employees that negotiations would begin from "square one." Millian did not recall those words being used, although she thought that was what Jansen meant. Potts, Bowers and Underwood did not claim that this statement was made. A second meeting was held in early May during which Jansen again expressed his opposition to the Union.

D. The Alleged Interrogation by Jansen

Virginia Aiello was employed from October 1977 to February 1982. According to her testimony, during the first week in June, Jansen called her to the office to explain about the discharge of another employee, Linda Poll, who was Aiello's friend. During this discussion Jansen asked her how she "felt about the Union" and then said that he could not ask her that question. Jansen then told her that he thought the Union was a farce and Sciarpetletti was a "spoiled brat" who had brought the Union in because she had not had time off the way she wanted it. When Aiello replied that she did not think Sciarpetletti was responsible, Jansen asked why the union representatives followed Sciarpetletti on the day that she left work early, allegedly to take her son home because he was ill. Jansen denied that he interrogated Aiello about her union sentiments or that he discussed Sciarpet-

letti. Jansen claimed that he initiated the conversation at the request of David Loughlin who had observed that Aiello appeared upset about the discharge of her friend. Their conversation, according to Jansen, was limited to that issue.

E. The Alleged Stricter Enforcement of Work Rules

The parties are in agreement that work rules were enforced more strictly at some point, but they disagree as to when this occurred, and as to the reason for the change. Counsel for the General Counsel contends that the changes occurred after April and were in retaliation for the employees' activities on behalf of the Union. Respondent contends that there was a general "tightening up of policies" which "reflected a new approach by the Company, which approach was formulated and developed well in advance of Local 1922's campaign." These new policies, it contends, were introduced to the employees through the handbook and they were implemented whenever the circumstances warranted it. As evidence of this changed policy, Respondent referred to its refusal to grant Sciarpetletti the type of leave she wanted in March and to its termination of another employee, Linda Poll, when she failed to return to work or provide a doctor's note for her absence.¹¹

It is undisputed that management had been lax in disciplining employees who were tardy in returning from their break periods. According to the employees and Parisi, commencing sometime in April or May, Lines began "chasing" employees back to work at the end of their break period. This did not happen every day but it did happen frequently. In addition, Lines began to require employees to remain at their work stations until actual quitting time, although prior to April or May, they had been permitted to leave their work area and to stand near the timeclock to punch out. Lines did not really dispute these allegations but she claimed that in May or June the lack of discipline had reached the stage of being "ridiculous." Parisi and the employee witnesses deny that there was a change in the manner in which the employees acted after April.

In addition to these changes, which apparently were applied to all employees, counsel for the General Counsel, alleged that Lines began to harass the union supporters by requiring them to wear safety glasses and to tie their hair back, by limiting their ability to talk during working hours, and by limiting their use of the bathroom facilities. These changes will be discussed below.

VI. DORIAN MILLIAN

A. Events Prior to April 6, 1981

As noted, it was Millian who contacted Local 1922 representatives on April 6 or 7. The record reveals that prior to that time Millian had several work-related problems. According to Millian, between September and December 1980, these problems were due either to the fact

⁸ Initially, Winter did not recall the statements and it was only after a question by counsel for the General Counsel referring to cards that she recalled the statement.

⁹ The counsel for the General Counsel stated that she was not contending that the handbook or its distribution constituted violations.

¹⁰ According to Jansen and Clifford, Millian sat across from Jansen and continually blew smoke in his face.

¹¹ The time of this discharge is uncertain but it was prior to April 28 because the discharge was discussed at Jansen's meeting with employees on April 28.

that Lines disliked her or because Lines was anti-Semitic. Millian attributed her problems with the Company between January and April 6 to the Company's animosity to her because of an injury she sustained while at work and because in a meeting in late January with Jansen, Respondent's president, she has threatened to contact a union. Her problems with the Company subsequent to April 6, she claimed were due to her activities on behalf of Local 1922, and the continued anti-Semitism of Lines.

Millian was hired as an assembler in September 1980 and at the conclusion of her probationary period in November 1980, she received a 10-cent-an-hour pay increase. She complained to Lines that another employee, Helen Underwood, hired about the same time that she was hired, had received a greater increase. Millian admitted that Lines told her at that time that the difference in the increases was due to Millian's failure to demonstrate sufficient versatility. Millian, apparently, did not consider that this comment indicated any dissatisfaction with her performance. Millian also testified that during the first few months of her employment Lines reprimanded her, on one occasion, for time she spent in the bathroom. On December 18, 1980, Millian suffered a hand injury which she attributed to the fact that the machine she was operating did not have a protective guard on it. Lines admitted that the machine did not have a guard but she claimed the injury was caused by Millian's own carelessness. Millian was on sick leave, due to the injury until January 12. When she returned to work on that day her work performance was reviewed.¹² Millian, again, received an increase which was lower than that given to other employees. Millian testified that she asked Lines whether the lower increase was due to her injury and Lines replied that it was due to her lack of versatility, which in part, was caused by Lines' own inability to rotate her to different jobs. In the affidavit secured from Millian in the investigation, however, Millian stated that Lines told her during the second review that the lower increase was due to the fact that she, Millian, did not work fast enough.¹³ On January 30 Lines observed that Millian was having difficulty with her work and she gave a demonstration to Millian on how to perform the work. After giving this demonstration, Lines left the area but within a short time she noticed that Millian had left her work area and was talking to another employee. Millian claimed that she was seeking assistance with a work-related problem from the other employee.¹⁴ Lines directed Millian to return to her work and, at the same time, she complimented the employee with whom Millian had been talking on her work performance. This fact upset Millian and she went crying to the bathroom. Lines followed her and attempted to calm her but without success. In fact, Millian became so overwrought that Lines requested Jansen to intervene. Both Jansen and Millian agree that during the subsequent meeting Millian was extremely agitated. Millian complained that her problems arose from Lines' dislike of her but Jansen attributed her

problems to her performance. According to Millian, she questioned Jansen about why the Company continued to employ her in view of the criticisms of her work performance and Jansen replied that her work on one component, the P-1, was good. Millian testified that when she realized that her complaints were not being satisfied she told Jansen that he would have a union sooner than he thought. Lines was not present at the time this alleged statement was made, according to Millian. Jansen denied that Millian made such a remark. The two affidavits secured from Millian by the Board agent during the investigation of the case do not contain any reference to such a statement. When questioned about this omission, Millian testified that she did not recall the remark until she was being prepared for the trial of this case. At that time counsel for the General Counsel questioned her about the various warnings which she had received prior to April 6 and it was in that context that she recalled the statements she allegedly made to Jansen.

On February 9, Lines, in checking Millian's timesheet, noted that Millian's work had been interrupted for 45 minutes when another employee used her equipment.¹⁵ Millian did not check with her supervisor to ascertain what she should do in the interval. She admits that Ella Parisi, Lines' assistant, questioned her about what she did in the interval and she told Parisi that she had corrected then uncut leads. She denied having any conversation with Lines. Parisi testified that Millian told her she had done termination work and she related this information to Lines. Lines drafted a memo concerning this incident in which she stated that she spoke to Millian and warned her that, in the future, should a similar incident occur, she was to check with her supervisor to determine what work she should do.¹⁶ Lines also testified that she checked with another employee about whether Millian had, in fact, prepared additional leads and had been told that additional leads had not been prepared.

About February 18, Millian was assigned to work on a Plessey machine. She refused to do the work claiming that the machine was not working correctly and her prior accident had caused certain fears. Lines changed her assignment but she made a report of the incident. About February 23, Lines told Millian to correct a mistake on a component, a DXF-13 bobbin. Millian testified that when she attempted to make the correction she realized that the error had not been her error. She explained this to Lines and, according to her, Lines originally agreed that the work did not resemble her work. However, after Lines checked Millian's timesheet and the timesheet of the other employee, who was doing similar work, Lines concluded that it had to be Millian's

¹² It was a regularly scheduled review.

¹³ Millian stated during the hearings that Lines only complained about her speed when she worked on solder pots.

¹⁴ This employee began her employment at about the same as Millian.

¹⁵ Although the transcript states that the incident occurred on June 9, 1981, the document drafted in connection with this incident and Millian's timesheet bear the date of 2/9/81 (G.C. Exhs. 40(a) and (b)). Moreover, the testimony with respect to this incident follows the January 1981 meeting with Jansen.

¹⁶ Although at one point Parisi stated that Millian had acted correctly in performing the work she did in the interval, at another point she testified that only a supervisor could determine what work an employee should do, it was not a decision to be made by an employee.

work.¹⁷ Millian continued to deny that it was her error, indicating that she thought someone had sabotaged her work. It was unclear why Millian thought that her work had been sabotaged. Millian denied that Lines reprimanded her during this interview about her excessive talking. A file note prepared by Lines about the incident does contain her notation that Lines verbally warned her about her lack of attention to her work.

On April 3 Millian and another employee, Debra Winter, approached Lines and requested permission to leave early on that day. Lines stated that several employees had called in sick and she, therefore, needed them to work. Millian and Winter insisted that it was necessary for them to leave and Lines advised both that they faced disciplinary action if they left work. Notwithstanding this, the two employees did leave work without permission, as did Randy Scott, another employee. On April 6, all three employees were disciplined. According to Lines, Millian, due to her attendance record, received a 3-day suspension while Winter and Scott, who did not have the same type of attendance record, received verbal warnings.¹⁸

It is undisputed that an error was committed with respect to components for Westinghouse, numbered 5802-2. It was determined in the final stage that 19 pieces did not test for continuity. Lines attributed the error to Millian, although her explanation as to why she thought it was Millian, rather than Susan Walker, the night-shift employee who has worked on the pieces, is unclear. Lines spoke to Millian about the error on April 6, and Millian again denied that it was her error. Parisi testified that the error could have been either Millian's error or Walker's error. A memo prepared by Lines in connection with the incident states that Lines told Millian that she held her responsible for the error and Lines also told her that her work performance would be watched more closely in the future.¹⁹ Lines admitted Walker made a winding error in connecting these components but there is no evidence that Walker received a warning about her error.

Thus, at this point before her contact with Local 1922, Millian had been told during both reviews of her work performance that her performance was unsatisfactory; she had been reprimanded for being in the bathroom; she had created a scene in a discussion with her supervisor and the president of the Company; she had been reprimanded for not checking with her supervisor about her duties; she had refused to work on a machine assigned to her; she had been criticized about certain work which she had done and she had absented herself from work without permission, notwithstanding her supervisor's warning that she faced disciplinary procedures.

¹⁷ Parisi testified that there was an error on the DXF-13 component but she did not know who made the error. Lines told her at the time that it was Millian.

¹⁸ Millian had been absent 6 days at the time of this incident, two absences were for religious reasons, and two were for a death in the family. It does not appear that Winter or Scott had a similar record either for attendance or for other work matters.

¹⁹ Lines claimed that she kept records because, during the earlier campaign by the Meatcutters, she had been advised to do so.

B. Events Subsequent to April 6, 1981

It was after being advised that she was to be suspended for 3 days for insubordination and after she received a warning for a work error on April 6 that Millian contacted the Local 1922 representatives.

Millian admits that on April 22 she had been working on P-1 components. Lines, in counting the components, noticed a difference between the number of components she had counted and the number contained on the timesheets prepared by Millian.²⁰ Millian insisted that she had wound the number of coils contained on her timesheets and she requested permission to examine the timesheets of other employees to ascertain if the discrepancy was due to a miscount by some other employee. Lines relayed Millian's request to Jansen. The following day Lines advised Millian that Jansen had denied her request to investigate the timesheets of other employees.²¹ During this conversation Lines criticized Millian about the number of coils she was winding and Millian replied that her machine was defective and she was having trouble with her hand.²² Lines claimed that an examination of the machine failed to produce evidence of malfunctioning. In addition, according to Lines, Millian stated that Lines had counted the coils because she knew some were missing, implying that Lines was trying to "trap" Millian. Lines told Millian that the misconduct would be viewed as a mistake but she was to consider their discussion as a verbal warning.

As noted, on April 27, Millian together with employees Bowers and Underwood and Local 1922 representatives approached Jansen and requested recognition. On May 4 Millian attempted to speak to the night-shift employees about joining the Union. These efforts occurred at the Company's premises.

About May 5 or 6, Millian was working on a P-1 component when she observed that the component was not testing correctly. Millian brought the piece to Parisi to examine it. Parisi could not locate the problem and she gave the component to Lines for her inspection. Lines testified that there had not been a similar problem with over 100 components previously manufactured and a visual examination of the outside of the component did not disclose what was causing the problem. Lines, together with Diana Gloumakoff, pulled the component apart and they discovered that the component had been cut and nicked in several places and Lines attributed these errors to carelessness on the part of Millian. Although it is undisputed that the component was not test-

²⁰ The brief submitted by counsel for the General Counsel states that Lines did not speak to Millian on the day of the alleged miscount, about not doing to her work, which she would have done if there had been fewer coils. It appears to be Respondent's position, however, that Millian's timesheet did not reflect that she was winding fewer coils, it showed that she wound her usual number. That was the problem, the number on her timesheet did not reflect the number of completed coils in the plant.

²¹ Lines testified that she would not accuse Millian of "fixing" her timesheets because it was possible that she had counted the same coil twice.

²² Millian admitted that in October she had been winding five coils a day but in April she was winding four coils a day. She attributed the difference to the size of the can used in the operation and to the injury of her hand.

ing correctly and that it was Millian who brought this matter to the attention of Parisi, much testimony was offered by the counsel for the General Counsel to establish that the error could not have occurred in the manner in which the Company asserts that it did occur.²³ Implicit in the testimony offered was the implication that Lines in some way damaged the component in her inspection, deliberately, in order to entrap Millian or damaged it to a greater degree to hide a minor error, easily corrected, in order to issue to Millian the disciplinary warning which Millian received on that day.²⁴ On that warning notice Millian admitted that she had made the mistake and noted that it was the first mistake of this kind that she had made, that it was an easy mistake to make, "when you notch the washers you do it right against the wire."²⁵ The memo also contains the statement that Lines spoke to Millian about her wind time. Millian explained, on cross-examination, that she had admitted the error prior to seeing the P-1 after Lines had pulled it apart.

On May 8, Millian came to the Board's Regional Office to arrange the details for the Local 1922 election. Thereafter, about May 11, and until her separation from the Company, in August, Millian was assigned to an area designated as "lab far corner." Millian testified that employees had never been assigned for that length of time to one location and further that the location was cramped, dirty, poorly lighted, and, in general, a disagreeable place to work. Respondent denied that the physical condition was as described by Millian, in fact, both Jansen and Lines claimed that they had frequently worked in the area and that testing operations were performed by other employees in that general area. They did admit however, that Millian was assigned to that location in an effort to reduce the amount of time she spent wandering around the plant or talking with other employees.²⁶ It is admitted that Lines spoke to Millian prior to April 6, about her tendency to talk to other employees. However, all witnesses for the General Counsel denied that they observed Millian walking around the plant or engaging in conversations with others more frequently after May than before that time. Millian spoke with both Lines and Clifford about her assignment to "lab far corner" on several occasions but without success.²⁷

In addition to the relocation to "lab far corner," Millian claimed that the type of work assigned to her was changed in May and, thereafter, she performed less

skilled operations. According to Parisi's testimony, employees with the most skills did the fine wire terminating work, machine winding and terminating and those with the lesser skills performed the laminating, tinning, insulating, and wrapping operations. The exhibits introduced²⁸ establish that from September 1980 through April 1981 Millian spent from about 15 to 57 percent of her time on machine-winding operations but, in May 1981, she spent only 15 percent of her time on such work and, thereafter, she did not perform this type of work at all. The records further establish that from September 1980 to April 1981, Millian spent from 8 percent to 21 percent of her time on insulating operations. She did not do this work in April or June 1981, but in July 1981, she performed insulating work for 53.4 percent of her time and in August 1981, she spent 15.7 percent of her time in insulating operations. The exhibits also reveal that Millian performed laminating operations from September 1980 to December 1980, from a high of 10 percent to a low of 2.5 percent of her time. She did not do this work at all in January, February, or March 1981, and only 7 percent in April 1981. However, she performed laminating operations 5.3 percent of her time in May 1981, 42.4 percent in June 1981, 4.5 percent in July 1981, and 11 percent in August 1981. With respect to tinning operations, Millian spent 13.3 percent of her time on that operation in September 1980, 24 percent in October 1980, 14.3 percent in November 1980, 8.1 percent in January 1981, 29 percent in February 1981, 18.4 percent in March 1981, 1.7 percent in April 1981, 22 percent in May 1981, and none thereafter. Thus, it is clear that after May 1981, Millian ceased to perform the more skilled operation of machine winding and spent various degrees of time on insulating, tinning, and laminating operations. Although not completely clear, it appears to be the Respondent's position that this change was due to the amount of time Millian spent on the winding operation, compared to other employees. The record reveals that Millian, during the period from October 1980 to December 1980 before her injury, performed the machine-winding operations in the following times: September 25, 1980, 4 coils, 184 minutes per coil; October 1, 1980, 4 coils, 115 minutes per coil; October 3, 1980, 3-1/8 coils, 87.5 minutes per coil; October 6, 1980, 5 coils, 92 minutes per coil; October 7, 1980, 5 coils, 93 minutes per coil. The record reveals the following time after her hand injury: January 6, 1981, 4 coils, 115 minutes per coil; March 20, 1981, 2 coils, 127.5 minutes per coil; April 20, 1981, 4-1/2 coils, 102.2 minutes per coil; April 21, 1981, 4 coils, 111.3 minutes per coil; April 23, 1981, 4 coils, 111.3 minutes per coil; April 24, 1981, 4 coils, 102.4 minutes per coil; April 28, 1981, 3 coils, 113.3 minutes per coil; April 29, 1981, 4 coils, 115 minutes per coil; May 1, 1981, 3-1/3 coils, 122.7 minutes per coil; May 4, 1981, 4-2/3 coils, 98.6 minutes per coil; May 5, 1981, 2-1/2 coils, 128 minutes per coil. Millian's time on the machine-winding operation was erratic and, although she claimed that the injury to her hand caused a decrease in her speed, one of her best times occurred in May 1981 after her injury. On the

²³ Parisi testified that the component did not test but she did not know what caused the problem. According to her testimony, if the component had been cut, as Lines alleged it was cut, it would have caused the outside wire to stick out. Parisi did not see such a condition when she inspected the piece.

²⁴ Both Sciarpelletti and Parisi testified that they had not seen a P-1 component pulled apart before. Parisi also testified that it was in July or August, when she was in the shipping department, that she first saw defective components and that was sometime after this event.

²⁵ G.C. Exh. 46.

²⁶ Lines and Clifford both testified that Lines had expressed her desire to discharge Millian in May, but they were cautioned by their labor consultant not to discharge her because she was involved in union activities.

²⁷ In view of the fact that Millian admittedly was isolated in that location, it is difficult to understand how she managed to talk to other employees.

²⁸ G.C. Exh. 48.

other hand, Jeanette Rissman, who began to do this work in early April, performed the operation quicker than Millian had either before or after her injury.

Counsel for the General Counsel contends that prior to April 1981, the Company had a lax policy concerning the use of the bathroom facilities, but following Local 1922's organizing campaign it began to issue a series of warnings and disciplined several union supporters, including Millian, for an alleged abuse of bathroom privileges.

Millian, Sciarpelletti, Bowers, and Winter testified that prior to April 1981 the Company's policy about the use of the bathroom was very lenient.²⁹ In fact, according to their testimony, the facility was used as a room where employees could "rest" from their work for brief periods of time, a fact known to Lines. Lines admitted that the Company had an "open" policy about the use of the bathroom facility but, by early 1981, its leniency was being abused and the use of the facilities had become "ridiculous." As a result, she spoke to the Company's labor consultant about what could be done to prevent the abuse and she was advised that it was difficult to restrict the use of the bathroom but there could be a limit on the amount of time allowed, a reasonable period would be about 10 minutes. Lines did not make a formal announcement about a change in the policy but she did tell Ella Parisi to make efforts to discourage the use of the bathroom for social purposes. Parisi testified that, at about the time of the Meatcutters campaign (she did not recall whether it was before or after the Union withdrew its petition), Lines did begin a more stringent policy concerning the use of the bathroom facility and she directed employees to leave the bathroom and spoke to them about the matter. Millian admits that Lines spoke to her about her use of the bathroom on one occasion, about two months after she was hired, and Winter recalls Lines did reprimand Millian in either February or March 1981 about her time in the bathroom.³⁰

Lines testified that due to the excessive use of the bathroom facility by employees she began to keep records. Lines could not recall when she began to maintain records, but the first record submitted by the Company was for June 2, the day before the election. On the document submitted for that day only Millian's name appears and, according to Lines, this was due to the fact that Millian was the employee who most abused the bathroom privileges. The record contains the notation that Millian was in the bathroom on 4 occasions on June 2 for a total of 55 minutes.³¹ Lines recorded that Millian was in the bathroom on June 3, 4, and 5, for 20 minutes, 25 minutes, and 22 minutes, respectively.³² On June 5, the records indicate that Millian and Underwood were in the bathroom at the same time for about 20 minutes.³³

²⁹ Parisi agreed with the testimony.

³⁰ Millian did not recall this reprimand.

³¹ These recorded times do not include usual break periods granted to the employees.

³² R. Exh. 38.

³³ Lines also recorded the bathroom times for Ella Parisi, Barbara Dixon, Helen Underwood, Carol Altwein, Doreen Conlin, Cathy Conlin, Josie Ferraggio, Jenny Aiello, Roshida Ali, Donna Stiles, Carol Potts, Kathleen MacMillen, Judy Bowers, and Jeannette Rissman on various days beginning about June 10, 1981. When questioned as to the reasons

The records note that Millian was in the bathroom on June 9 for 45 minutes on two visits and on June 10 for in excess of 70 minutes on three visits.³⁴ On June 10, in a conversation about personal days Lines claimed that she asked Millian whether she was ill because she appeared to be away from her work location for long long periods of time. Millian replied that her stomach hurt and Lines advised Millian to go home but Millian replied that would not be necessary. Lines made a memo of this conversation.³⁵ Millian recalled Lines speaking to her about personal days but did not recall Lines speaking to her about her time in the bathroom and she denied spending excessive amounts of time in the bathroom.

Lines testified that during the following days she continued to record the time spent in the bathroom by Millian and other employees. These records contain two documents relating to Millian's time in the bathroom on June 15 and 16. The first document states that Millian went into the bathroom at 9 but it does not mention the time that she left. She entered the bathroom against at 11:30 and left at 11:51; she returned at 1:50 and left at 2:05 and entered again at 4:05 but it does not disclose when she left. It also contains times for June 16, as follows: in 9:10, out 9:27; in 11:35, out 11:52 and in 1:45, out 2:07. At the bottom of this document are the words, "When I chased her out of the ladies room."³⁶ The second document, also records Millian's time in the bathroom on June 15 and 16. The times recorded on this document for June 15 are in 11:35, out 11:52; in 1:50 and out 2:05. The times recorded for June 16 are in 9:10, out 9:25; in 1:56 and out 2:16. In addition to the times for these 2 days, this document also lists times for June 11 and 17, 1981. It does not contain any mention that Lines chased Millian out of the bathroom.³⁷ Lines testified that she prepared all the documents which recorded Millian's times in the bathroom in June, and she further testified that the Company had only one employee named Dorian.³⁸

Lines claimed that it was on June 16 that she "chased" Millian from the bathroom after she observed that she had been there on three occasions. Millian did not recall Lines speaking to her about excessive time in the bathroom on that day and she also did not recall discussing the bathroom issue with Clifford on June 17 or telling Clifford that Lines had chased her out of the bathroom and that there was no time limit on the use of the bathroom. Clifford testified that he had such a conversation with Millian during which he told her that there was too much time being spent in the bathroom, and Millian replied that "her people" did not think 10 minutes was an excessive amount of time. Notwithstanding these alleged excessive times in the bathroom, it does not appear that

why these records began on June 10, 1981, for these employees, Lines said it was due to her inability to locate all the records. The records reflect that these employees spent anywhere from a few minutes to 15 minutes and, with one or two exceptions, the records reflect one visit a day.

³⁴ R. Exh. 36A.

³⁵ R. Exh. 36B. Counsel for the General Counsel referred to this memo as cautionary note.

³⁶ R. Exh. 37A.

³⁷ R. Exh. 38X.

³⁸ The documents refer to Dorian.

Millian received a written warning about the matter in June.

Lines testified that on June 24, Millian came to her office to complain about being in "lab far corner." During the conversation Millian told Lines that she was being harassed, that she had been assigned to that particular seat because she went to the Labor Board. Lines replied that she was assigned to that location because she spent too much time talking and she disrupted other employees. Lines also cautioned Millian that she had to bring her work up to standard. Millian did not recall having a conversation with Lines on June 24 but she admitted that she spoke to Lines on several occasions about being in "lab far corner" and in one conversation she did mention the Labor Board.³⁹ She denied that Lines told her that she talked too much and that, as a result, her work performance was below standard.

In late June or early July, Millian's work performance was reviewed. According to Millian, Lines told her that she would receive a 10-cent-an-hour increase and that was the extent of the discussion. Lines, on the other hand, claimed that she spoke to Millian about her wandering around the plant, her excessive time in the bathroom, and her failure to complete pieces in the standard time. In fact, Lines stated that she showed Millian charts to prove to her that she failed to complete the work in the standard time but Millian did not pay attention.

In late July Millian registered for the day session at a local college and she spoke to Lines about the possibility of a transfer to the evening shift. Lines replied that she would check to see if it could be arranged. According to Millian, she registered for the day session although she did not know at the time if she would be transferred to the night shift. On August 14 Millian was told that she could not be transferred because there was no position available.⁴⁰

On August 7 Millian arrived at work; Lines asked why she was there, she was scheduled to be on vacation. Millian denied that she was scheduled for vacation, but offered to leave. Lines told her to remain at work.

On August 10 Millian was verbally warned by Lines about her excessive time in the bathroom but Millian denied that she had been in the bathroom for more than 10 minutes. Millian discussed this warning with Clifford but he agreed with Lines and told her that he had watched her and she spent too much time in the bathroom. Clifford then warned her that continued abuse of the bathroom privileges would result in disciplinary action.

Jeannette Rissman became Lines' assistant in about July. She replaced Parisi because Lines had become dissatisfied with Parisi.⁴¹ Lines instructed Rissman to check

³⁹ Millian recalled that in a conversation with Clifford about "lab far corner" she also mentioned the Labor Board.

⁴⁰ Millian apparently did not change from day session to the evening session at school, although she knew on August 14 that she would not be transferred to the night shift.

⁴¹ Lines claimed that she became convinced that Parisi was not following her instructions about recording the times employees spent in the bathroom and was not enforcing other rules.

on the employees who seemed to be in the bathroom for excessive periods of time. In accordance with these instructions, Rissman began to check the employees' use of the bathroom. However, she did not make it obvious to the employees that she was keeping a record but stood in the back of the plant where she could observe the employees. Rissman claimed that she had not been instructed to observe any particular employee or employees but she initially limited her observation to Millian, Bowers, Underwood, and MacMillen⁴² because they went to the bathroom together and remained there for long periods of time. The records prepared by Rissman contain the notation that on August 11 Millian was in the bathroom for 64 minutes, Bowers for 29 minutes, Underwood for 75 minutes, and MacMillen for 45 minutes, and on August 12 Millian was in the bathroom for 30 minutes, Underwood for 51 minutes, and Bowers for 35 minutes.⁴³ On August 13 all four employees received warnings for excessive times spent in the bathroom.⁴⁴

Millian received a check for her vacation pay on August 12 which indicated that her vacation was to commence on August 21. According to Millian, she was not scheduled for vacation until August 24, in accordance with arrangements she had made with Lines in June. Millian spoke to Lines about the problem but Lines insisted that Millian had asked for the week beginning August 21. Millian claimed that on August 7 she had seen Lines' vacation log and the date set forth there indicated the date she had requested. Millian, in effect, claimed that Lines deliberately changed the records. Lines denied that she had made any changes as alleged by Millian.⁴⁵ Millian admitted that she had asked for different vacation days in the month of July and had not encountered any problems. Although she had refused, initially, to allow Millian to take her vacation on August 24, Lines subsequently permitted her to do so, after discussing the matter with Clifford.

On August 17 Rissman again recorded the time spent in the bathroom by several employees, including Millian. Her notes reflect that Millian was in the bathroom in excess of 70 minutes. On that day, Clifford suspended Millian for 3 days for her abuse of the bathroom privileges and for ignoring the prior warnings. Millian testified that she did not recall being in the bathroom for in excess of 70 minutes. However, on the warning notice issued to her on that day, Millian, in the area provided for an employee's response, noted that the bathrooms were not functioning properly and she had severe cramps due to the harassment she was being subjected to because of her union activities.

⁴² These four employees had been observed in the bathroom by Rissman before she became a supervisor. According to Rissman, their use of the bathroom always at the same time had been a joke among the other employees.

⁴³ Millian denied being in the bathroom on August 11 for 64 minutes but admitted she could have been there on two occasions for 30 minutes on August 12.

⁴⁴ Two other employees received warnings about excessive use of the bathroom. However these warnings were given to Doreen Conlin and Barbara Dixon in September.

⁴⁵ Millian's affidavit states that Lines wrote the vacation dates in a notebook but she testified that Lines put the dates on a white chart, and she put slashes in boxes on the chart to indicate Millian's vacation dates.

Millian returned from her 3-day suspension on August 21. Rissman claimed that she continued to keep records on the use of the bathroom facility by employees.⁴⁶ According to her records, Millian was in the bathroom on three separate occasions for approximately 35 minutes before 2:30 p.m. on August 21. Clifford called Millian to his office to tell her she was being discharged.⁴⁷ However, before he could make that statement, Millian told him that she was resigning. In her resignation note, she stated that she was leaving the Company because she was being harassed for her union activities.

VII. PENNY SCIARPELLETTI

Sciarpelletti began her employment with the Respondent in 1974. It is undisputed that she was considered a competent and experienced employee. She also had been on friendly terms with Lines and Jansen and, as noted, she was the observer for the Company during the Meatcutters' election. During her years of employment and until April 16, 1981, Sciarpelletti had not been reprimanded about her work performance, although in December 1980, Lines did speak to Sciarpelletti on two occasions about her attendance record.⁴⁸ Although Sciarpelletti termed these warnings a mere formality she did admit that during her review in January 1981, Lines had told her that her increase would have been greater but for her attendance record.⁴⁹

Sciarpelletti testified that prior to March 1981 she had requested and received permission from Nicholas Gloumakoff to take a week's leave of absence without pay in March 1981. However, when Sciarpelletti spoke to Lines about her leave on March 16, she was told that she could not take a leave without pay but could take the week off, using a combination of vacation and personal days to cover her absence. When Sciarpelletti appealed to Jansen, he agreed with Lines that Sciarpelletti could not take the leave without pay. Sciarpelletti became angry with Lines when she received this reply and, as a result, she ceased being friendly with Lines and she reduced her production on a component she was working on, the P-1 component. Sciarpelletti claimed she quickly forgot her anger but admitted that after March 16 she did not go to Lines' office to have a morning talk, something which she had been in the habit of doing before March 16. Sciarpelletti further testified that she continued to produce the P-1 component at a reduced rate because she discovered that, in doing so, she had less problems with the glue that she was required to use. Sciarpelletti and Parisi both testified that Sciarpelletti had complained about the problems with the glue on several occasions prior to April. Lines testified that the first time Sciarpelletti mentioned the problems to her was on April 16.

⁴⁶ These records now included the names of many additional employees.

⁴⁷ During Millian's suspension, Clifford checked with the local community college to ascertain whether Millian had registered for school and was told that she had registered as a full-time student. It is unclear why Clifford checked with the school.

⁴⁸ Sciarpelletti claimed that Lines told her that she was giving her these warnings only to protect the Company from charges of discrimination during the Meatcutters' election scheduled for January 1981.

⁴⁹ Sciarpelletti had prior leaves of absence.

Sciarpelletti attended the union meeting on April 16 and she signed an authorization card for the Union.⁵⁰ On April 16, about midday, Sciarpelletti was called to Lines' office and was reprimanded by Lines for her reduced production on the P-1 component.⁵¹ Sciarpelletti explained that she had reduced production because she found that the reduced speed caused less problems with the fumes of the glue and with the mess it created when it splattered. Lines questioned Sciarpelletti, in effect, that she thought the reduced production was due to her anger about her leave and was not attributable to the glue. Lines told Sciarpelletti that she was expected to produce one coil in approximately 94 minutes and failure to do so would result in disciplinary action.

The record reveals that prior to March 16 Sciarpelletti had wound five coils in 92 minutes per coil on February 19 and 20.⁵² It also reveals that on March 17, 18, 19, 30, and 31, she wound 4 coils in 115 minutes per coil. On April 1 she wound 2-1/2 coils in about 122 minutes per coil and on April 15 she wound 3 coils in about 121 minutes per coil. It appears that Jeannette Rissman who began winding the P-1 component in early April, wound 4-3/4 coils in 92.6 minutes per coil on April 3, and 5 coils in 77 minutes per coil on April 7.⁵³ The record establishes that Rissman's work was not as good as Sciarpelletti but it did pass the inspection process.

Sciarpelletti complained to Clifford on April 24 about alleged statements made about her by management representatives. During this conversation, Sciarpelletti told Clifford that the company representatives had the impression that she was the employee who had called the Union but she was not responsible for the Union.

Counsel for the General Counsel contends that prior to April 1981 Sciarpelletti basically did the skilled work which included fine wire terminating, machine winding, and complex testing operations and she had not been assigned generally to the less complicated work which included the routine hand winding, laminating, insulating, and assembling operations, although she had, on occasion, done that work. Sciarpelletti testified that beginning in May or June, she was assigned for a greater portion of her time to the less complicated tasks.⁵⁴ Counsel for Respondent argues that Sciarpelletti, basically, continued to do the same work after April as she had done prior thereto.

The record reveals that during the month of January Sciarpelletti worked 4 full days and various amounts of time for 5 days on the DXF-10029 component. On these days Sciarpelletti performed various operations including winding, trimming leads, stripping leads, tinning leads, terminating leads, and assembling. In addition, she performed the Repco work, which is considered fine wire

⁵⁰ Sciarpelletti testified that she first heard about Local 1922 on April 9 or 10 when Millian and Winter told her that they had contacted the Union.

⁵¹ As noted, this was the first time that Sciarpelletti's work performance was criticized.

⁵² Sciarpelletti worked on some process of the P-1 component for all or part of the day on 13 days between January 1981 and March 16, 1981.

⁵³ Sciarpelletti taught Rissman how to wind the P-1 coil.

⁵⁴ At one point, Sciarpelletti testified that she spent about 60 percent of her work time on these less complicated duties after April 1981.

work, on 2-1/2 days and she spent 2-1/2 days on a M-1663 component. In February, Sciarpelletti worked on the DXF-10029 component from 1 to 6 hours on 5 days and the work included testing inductance, washing tops, replacing cores, gluing and testing hi-pot. In addition she did Repco work full-time on 2 days and for various amounts of time on 6 other days and she wound the P-1 component full-time on 2 days and part-time on 5 other days. In March, she reduced the time she worked on the DXF-10029 component and increased the time she spent winding the P-1 component. Thus she worked 2 full days and parts of 3 days on the DXF-10029 component and the work she did included gluing, winding, cutting fish papers, and testing hi-pot. She worked 6 complete days on the P-1 component basically performing machine-winding operations. She also worked 1 full day and various amounts of time on 2 other days doing Repco work. Sciarpelletti admitted that there was little, if any, Repco work in the plant between April and September 1981. In May Sciarpelletti worked on the DXF-10029 component for 10 full days and on 4 of those days she did the machine-winding operation for several hours. In addition she worked 1 full day and part of another one on a 10033 component and on that component she tested inductance, trimmed leads, tinned, washed, and picked paint off the base of the leads. In June Sciarpelletti worked on the DXF-10029 component for 11 full days and for various number of hours on 6 other days. She performed winding operations on that component 1 full day and for several hours on 2 other days. The remainder of the work she did on the DXF-10029 component included assembling, making clasps, and retesting cores. In that month Sciarpelletti also worked on three other components for different amounts of time and the work involved assembling, scrapping, and processing. In July Sciarpelletti worked 4 days on 2 components, 6415 and 6749⁵⁵ and various amounts of the time on 6 other days on the DXF-10029 component performing different operations including winding, terminating, making clasps or assembling. In August the records reveal that Sciarpelletti did fine-wire work on 3 days, hand winding operations on several days, and on about 4 days she did machine winding on the DXF-10029 component. Thus the records establish that between January and May,⁵⁶ Sciarpelletti did more machines-winding operations on the DXF-10029 component and the P-1 component than she did in June, July, and August.⁵⁷ While it is true that Sciarpelletti continued to work on the DXF-10029 component after June, her duties involved less of the machine-winding operation and more of the assembly work and the less complicated operations.

Sciarpelletti admitted that the DXF-10029 component was an expensive item but she claimed that the assembly work on it was of a less complicated nature, and, therefore, was more tedious. Although Sciarpelletti did less

machine winding after June,⁵⁸ she continued to do some of the more difficult work in the plant and, in fact, it appears that the amount of time spent on fine-wire work after April was equal to or slightly more than the time she had spent on that work prior thereto.

In addition to the change in her work assignments, Sciarpelletti testified that, beginning about June, she was assigned more frequently to a specific location, which she referred to as Seat 7A.⁵⁹ She claimed also that after Millian left she was assigned to "lab far corner." This version of her assignment is supported by the testimony of other employees. Ella Parisi testified that she was instructed by Lines to bring work to Sciarpelletti either to Seat 7A or to "lab far corner," during the summer months. According to Parisi, this was an unusual procedure, generally, employees went to where the work was located. Although, initially, Lines denied that she had assigned Sciarpelletti to a specific location, subsequently she admitted that she assigned her to Table 10,⁶⁰ in order to isolate her and prevent her from talking to other employees.⁶¹ At another point Lines claimed that she assigned Sciarpelletti to "lab far corner" or to a "secluded" location because she was doing fine-wire work which required concentration.

Sciarpelletti testified that in June there were only 3 days when she could state definitely that she worked at Seat 7A, on 8 days she thought she worked at Seat 7A or Bench 9 and on 7 days she worked at some location other than Seat 7A. However, Sciarpelletti did testify that in July and part of August she was in Seat 7A consistently and after that in "lab far corner." Respondent argues that if Sciarpelletti perceived that she worked at Seat 7A and "lab far corner" more frequently it was due to the fact that there was more fine-wire work in the plant between April and September and she was assigned to those locations because of her need for greater concentration. Although it appears that Sciarpelletti did more fine-wire work in August and September, it was not a significant amount. Moreover, there is no evidence that Lines had isolated Sciarpelletti in such a manner when she had performed this type of work before April.

On June 1, Sciarpelletti was called while working and told her son was ill. She claimed that she could not locate either Parisi or Lines to tell them that she had to

⁵⁵ The affidavit secured in the investigation from Sciarpelletti states, that prior to April 16, she worked on the more expensive and complex jobs including fine wire work, P-1 winding, DX-10029 winding, assembling, terminating and testing. However, Sciarpelletti testified that that statement was taken out of context and that she had not meant to imply that assembly work on the DXF-10029 component was complex work.

⁵⁶ Although counsel for the General Counsel stated that this assignment began in May, Sciarpelletti testified that she thought that her assignment to a specific location started in June but she was certain she was being assigned to a specific location in August. Sciarpelletti's time-sheets, as noted above, disclose that she spent a considerable portion of her time in the month of May doing machine winding on the DXF-10029 components, which work according to Sciarpelletti, would not be done at Seat 7A. Moreover the affidavit secured from Sciarpelletti in July fails to mention anything about being assigned to Seat 7A.

⁵⁷ Lines testified that she assigned the less complicated work to Sciarpelletti after April "to keep her well-rounded" and because she was trying to give other employees more experience.

⁵⁸ There is no evidence Lines issued a warning to Sciarpelletti about her alleged talking.

⁵⁵ The work is considered fine-wire work.

⁵⁶ In May Sciarpelletti did more machine-winding work on the DXF component than she had in the prior month.

⁵⁷ It is conceded that Sciarpelletti did not work on the P-1 component after Lines criticized her on April 16, 1981. That work, thereafter, was performed by Rissman.

leave work to go to her son but she did tell Diana Gloumakoff to tell Lines⁶² that she was leaving work. Thereafter, according to Sciarpelletti, some employees told her that management did not think that she had left work to care for her son but had left to attend a union meeting.⁶³ Sciarpelletti wanted to convince management that she had, in fact, left work to care for her son and on June 5 she made arrangements to have a school representative explain to Respondent what had happened.⁶⁴ Sciarpelletti was called to Lines' office on June 5 and questioned about why she had the school representative call the Company when no one had questioned her about the matter. During this meeting Lines reprimanded Sciarpelletti for not telling Lines that she was leaving work. Sciarpelletti replied that she had attempted to locate Lines and when she could not do so she had asked Gloumakoff to explain to Lines why she had to leave. At this point Gloumakoff⁶⁵ and Sciarpelletti became engaged in a heated argument with Gloumakoff stating that it was not her responsibility to relay employee messages. Gloumakoff left the room and Sciarpelletti was about to leave when Lines directed her to sit down. Sciarpelletti refused, stating that she was too upset. Lines repeated her direction to Sciarpelletti to sit down and told her that it was an order but Sciarpelletti continued to refuse to sit. At this point Lines told her if she continued to refuse to obey an order she would be fired. Sciarpelletti asked whether she was fired, to which Lines replied yes. Sciarpelletti left the room but returned to ask for written confirmation that she had been discharged. Lines suggested that they talk about the matter and she pointed out to Sciarpelletti that she had been insubordinate. Sciarpelletti testified that Lines said "technically" she could discharge Sciarpelletti because she had been insubordinate but she did not want to discharge her. Lines told Sciarpelletti to go home while she decided what to do. Later that day Lines called to tell Sciarpelletti that she was not discharged, but she was suspended for the remainder of the day. Initially, Sciarpelletti testified that Lines told her on June 8 when she returned to work that her performance was down due to her "heavy union involvement." However, on cross-examination Sciarpelletti could not recall whether Lines talked about her work performance on June 8 at all but she did recall that Lines asked her assistance to keep tempers "cool" because the union activity had caused tension and she knew Sciarpelletti was involved in that activity.

On June 15, Lines left a note for Sciarpelletti to process 5802-1 components.⁶⁶ The process involved trim-

ming leads to certain lengths. According to Sciarpelletti, it was normal procedure to leave a ruler or a sample to demonstrate to what length the leads should be cut. Lines failed to provide either the ruler or a sample and Sciarpelletti assumed that the leads were to be cut to the same length as the leads on another component on which she had been working.⁶⁷ However, Parisi testified that she had instructed Sciarpelletti on the length to cut the pieces. Moreover, Sciarpelletti's timesheets for June 12, 1981, indicate that she had worked on a similar component on that day and had been instructed to cut the leads to a specific length. On June 16 Parisi noticed that Sciarpelletti had cut all the leads the same length and she reported the error to Lines who instructed Parisi to tell Sciarpelletti to correct the error. It does not appear that Lines took further action at that point. On the following day Sciarpelletti again was assigned to work on the 5802-1 component, this time she was to core the component. Sciarpelletti stated that she had not done this type of work in some years. Parisi testified that she had observed Sciarpelletti core a component before she started the job on that day and that she did the job correctly and, therefore, Parisi thought further demonstration was unnecessary. It is undisputed that Sciarpelletti cored the components incorrectly. Sciarpelletti attributed her error to Parisi, claiming that when she cored the first component she did it correctly but Parisi told her to change the way she was doing it. When Lines checked her work she found that Sciarpelletti had put cores upside down in half of the components and she had put the "ears" on incorrectly on all of them.⁶⁸ Lines reprimanded her for her lack of attention to her work and criticized her for talking too much. Sciarpelletti claimed that during the discussion with Lines about the error she did not tell Lines that Parisi had given her wrong instructions but she did tell her that Parisi had not given her a demonstration on the job before she started her work. Sciarpelletti received a disciplinary warning concerning this error. Lines asked Parisi to make a written report concerning the errors which Sciarpelletti had made in connection with the 5802-1 component, which Parisi did on June 17.⁶⁹ In that memo Parisi stated that she had instructed Sciarpelletti on the correct procedure with respect to the length to cut the leads and had observed her core one component and that she had done it correctly. According to Sciarpelletti, she had made errors previously and had not received warnings. However, there is no evidence that on those other occasions Sciarpelletti had made several mistakes on the same component.⁷⁰

⁶² Gloumakoff denied that Sciarpelletti requested her to tell Lines about her absence and denied that she was in a habit of taking employee messages.

⁶³ Parisi claimed that Dave Loughlin told her that he thought Sciarpelletti left to attend a union meeting on June 1. The election was scheduled for June 3.

⁶⁴ Sciarpelletti testified that on the day of the election when she attempted to speak to Nicholas Gloumakoff he referred to her as a "Judas."

⁶⁵ Gloumakoff was present during the beginning of the meeting.

⁶⁶ Sciarpelletti testified that this was the first time that she had received written instructions from Lines. She received about three other such notes during the remainder of her employment. Sciarpelletti claimed that the other employee who received such notes was Dorian Millian.

Lines testified that several employees routinely received notes about what work they should do.

⁶⁷ Sciarpelletti admitted that it was her error not to ask Lines for instructions.

⁶⁸ Sciarpelletti did not explain why her errors, if attributable to wrong instructions by Parisi, were not all the same errors.

⁶⁹ G.C. Exh. 38. In the memo Parisi also stated that after Lines spoke to Sciarpelletti about the errors, Sciarpelletti said to Parisi in passing, "Lady, your ass is grass." Parisi, in the memo, stated that she thought Sciarpelletti's statement to her referred to her demonstration of how the job should be done.

⁷⁰ Sciarpelletti said she had continuity problems on the P-1 component in 1980 or early 1981, and Loughlin told her to discard the components.

Continued

In July, Sciarpetletti's work performance was reviewed by Lines. Sciarpetletti testified that, initially, Lines said that her work performance and attendance had improved but then Lines corrected herself and said that her performance and attendance were not good. The affidavit secured for Sciarpetletti during the investigation states only that Lines said that her work performance was bad. Although Sciarpetletti's performance was criticized she received a 15-cent-an-hour pay increase.

On September 17, Sciarpetletti was reprimanded by Lines because of a complaint that Lines had received from another employee. Lines told Sciarpetletti that the employee⁷¹ had accused Sciarpetletti of deliberately blocking this employee's efforts to get coffee when they were on the coffee line. Sciarpetletti denied being on the coffee line because she did not drink coffee. Lines warned her that she did not want any further complaints. Sciarpetletti concluded that this story about the coffee line was fabricated by Lines. Lines testified that she had received the complaint about Sciarpetletti from Lucia Belle, a black employee.⁷² Belle stated that almost from the start of her employment she had the impression, gained from Sciarpetletti's conduct, that Sciarpetletti did not like her. Belle testified that whenever she attempted to get coffee while on the coffee line Sciarpetletti would deliberately block her way or block her from getting her coat. Belle claimed that she had avoided becoming directly involved in an incident with Sciarpetletti over her conduct but she did complain to Lines about it on at least three or four occasions.⁷³

On September 28 Sciarpetletti was suspended for 3 days as a result of a further incident with Belle. Belle testified that she had observed the assistant supervisor,⁷⁴ speaking with Sciarpetletti and Sciarpetletti appeared annoyed. At this point, Belle had to correct a "jam" on her machine which required her to stand and push her chair back and, according to Belle, Sciarpetletti who was coming down the aisle deliberately kicked her chair, hitting Belle's leg.⁷⁵ Belle was very upset by the incident and reported it to Lines.⁷⁶ Sciarpetletti admitted that she

did walk behind Belle and that as she did, her right foot touched Belle's chair but it was a minor touch and she forgot the incident. When she was called to Lines' office and told Belle's version about the incident, she denied it had occurred. However, Lines told her that she was suspended for 3 days and, if there were further incidents, she would be terminated.⁷⁷

After this suspension, Sciarpetletti concluded that the Company was "setting her up," if they could not discharge her for attendance, or poor work performance, they would fabricate things about her.⁷⁸ According to Sciarpetletti, she was then having personal problems and she could no longer face the uncertainty about her job, and she decided to resign.

VIII. DEBRA WINTER

Winter began her employment with the Company in 1979. She attended the original union meetings, signed an authorization card for the Union, and after the election on June 3 wore a button and T-shirt to indicate her support for the Union.

As stated above, Winter left work without permission with Millian on April 3. On April 6, she was verbally warned about her unauthorized absence.⁷⁹ On April 17, Gregory Gloumakoff accused her of distributing union authorization cards, which she denied. While she was speaking with Gloumakoff, Jansen passed them and asked her how she had enjoyed the trip to Virginia on April 3. Winter became upset by Jansen's comment because she had attempted to keep the trip a secret from management representatives.⁸⁰ At this point, Winter started to cry and she, together with MacMillen, went to the ladies' room. Lines and Jansen testified that the door to the ladies' room was slammed by these employees with such force that the wall shook. Jansen, apparently, considered both employees responsible for the door slamming because he testified that he gave both a verbal warning for their disruptive conduct.⁸¹ Winter was unsure whether Jansen "screamed" at both employees.⁸² In any case, Winter did receive a verbal warning about the door "slamming" incident after she had the conversation with Gloumakoff during which he accused her of distributing cards for the Union. Winter testified that when she was hired she was instructed by Gregory Gloumakoff to tie her hair back. The rule was not enforced until about mid-April when she claimed Lines

Sciarpetletti also claimed that she had made errors with respect to the DXF-10029 component in September or October 1980, and it was an expensive error, which unlike the 5802-1 component, could not be corrected. Lines had not given her a warning at that time.

⁷¹ Lines did not tell Sciarpetletti the name of the employee.

⁷² Lines said that, from her prior friendship with Sciarpetletti, she was aware that Sciarpetletti was prejudiced. However, Sciarpetletti and other employee witnesses testified about Sciarpetletti's friendship with another black employee.

⁷³ Belle was not certain of the exact date of her conversation with Lines about the coffee, but placed the date as sometime between the end of July 1981 and when Sciarpetletti was suspended in September.

⁷⁴ The assistant supervisor at this point was Rissman, with whom Sciarpetletti admittedly was not on good terms.

⁷⁵ Belle claimed that Sciarpetletti could have used other aisles, but deliberately "came past her way."

⁷⁶ Belle appeared to be upset about the incident when she testified.

⁷⁷ Counsel for the General Counsel notes that Lines only questioned employees who were management supporters about the incident but failed to question union supporters, Doreen Conlin and Barbara Dixon. However, Lines did question Sciarpetletti, who admitted that she touched Belle's chair, but denied that she kicked it. Conlin and Dixon were not called to support Sciarpetletti's claim that the incident was trivial. Assuming, arguendo, that it was minor, my observation of Belle does not lead me to conclude that she considered it minor, or that she reported it as minor to Lines. Further, it should be noted that this was the second

complaint about Sciarpetletti from the same employee, within a matter of a few days.

⁷⁸ It is uncertain what Sciarpetletti considered to be fabricated, at least with respect to the September 28 incident. She admits that she touched the chair and she admits that Belle complained.

⁷⁹ This was not alleged as a violation. The affidavit she gave during the investigation said that Lines said no action would be taken against her but Winter testified she thought she had received a verbal warning when Lines spoke to her.

⁸⁰ Winter, apparently, believed that Gloumakoff, who she considered to be a friend, had betrayed her "secret" to Jansen.

⁸¹ Jansen admitted that his annoyance with the door slamming was because it reminded him of an earlier incident, in the Meatcutters' campaign, when an employee who was prouion slammed doors.

⁸² Only the warning issued to Winter was alleged as a violation. Counsel for the General Counsel stated that, if it is found that a warning was issued to MacMillen, that warning also constitutes a violation.

told her every day to tie her hair back. She also recalled Lines speaking to another employee, Cathy Conlin, about the same subject matter although Conlin had short hair. According to Winter, she heard that, prior to her employment, there had been a problem about an employee's hair and the machine she was operating but she did not recall the details.

Winter further testified that, beginning about April, employees were instructed to wear safety glasses while working on the solder pots. Winter claimed that she knew that sometime in April an employee had suffered an eye injury while working on the pots.

Winter resigned on August 21 because she had decided to attend school in the daytime and her request for a transfer to the night shift was denied.⁸³ Respondent contends that in August additional employees were not needed on the night shift. The record discloses that there were 12 employees on the night shift on August 4; 10 on August 8; 9 on August 18; 7 on August 25; 6 on September 1; 5 on September 8 and 15; 6 on September 22; and 9 on September 29. In September, however, Respondent began to hire employees for the night shift. The first employee hired was Steve Mierjski on September 15. Thereafter, Respondent hired Scott Wolf, Veda Oliphant, Barabra McDonald, and Mary Erhard on September 21, T. Martinez, Mike Kuster, and Lind Gibbons on September 28, Judith Onigbly and David Poupard on September 30, and Denise Finn on October 7. According to Clifford, work in a department referred to as the "glop" shop traditionally had been performed by men and, therefore, a man was hired for the department on September 15 after three male employees from that department discontinued their employment with the Company in late August or early September. The type of work performed by Winter, Millian, and Bowers was assembling, winding, and work on the machines, and this work traditionally was performed by women. As noted, the first women hired for the night shift were hired on September 21, a month after Winter had resigned. Although aware that Bowers, Millian, and Winter had requested a transfer to the night shift, it does not appear that when openings became available Respondent sought to contact those employees. Respondent witnesses claimed that it was not company policy to contact former employees to offer them positions when work became available. The record does reveal that when Bowers made a request to be rehired in October 1980 she was rehired.

IX. JUDITH BOWERS

Bowers began working with the Respondent in April 1980 and worked until September 1980, when she left to work for another company. In October 1980 she was rehired by Respondent. Bowers was active on behalf of Local 1922, she solicited other employees to sign authorization cards, and she was one of the employees who accompanied the union representatives at the time they made the demand for recognition on April 27. Counsel

for the General Counsel contends that Bowers was discriminated against by Respondent because of these activities in the following manner: the type of work she performed was changed, she received verbal warnings concerning safety rules, she received a written warning about her alleged abuse of bathroom privileges, she was given a lower wage increase, and her request for a transfer to the night shift was denied.⁸⁴ The actions caused her to resign. Thereafter, when Bowers applied for reemployment, Respondent refused to rehire her for discriminatory reasons.

Although Bowers had been employed for some time prior to engaging in activities on behalf of the Union, it was conceded that she had not been able to do the more complicated work. In fact Bowers admitted that Lines' efforts to have her master more difficult tasks were unsuccessful because she was "afraid" of the machines. Nevertheless, Bowers claimed that she had graduated to the less complicated machine-winding operations prior to April, but this changed after April and, thereafter, she was not assigned to do machine-winding work, but was reduced to doing hand-winding work which was less interesting and therefore less desirable work. Further, she claimed she was assigned to do more tinning work, which caused her physical problems and therefore was more onerous work.⁸⁵ An examination of Bowers' timesheet establishes that prior to April she performed tinning operations on a consistent basis from January through April and that the bulk of the machine-winding work that she performed occurred in the month of February, although she did do some of this work, to a much lesser degree, in March and April.⁸⁶ In June Bowers continued to do the tinning work, and on June 2, 3, 4, 5 and 8, she did hand-winding operations. In the month of July, she did tinning work, and again she was assigned to do hand-winding and not machine-winding operations on July 9, 12, 13, 14, 16, and 27 for different amounts of time. In the month of August, Bowers did tinning work but to a lesser degree than she had done previously, and she did not do hand or machine winding. Bowers conceded that she had done hand-winding work prior to April; however, she claimed that the work she had done before April involved her in the entire process on the DXF-25 component which was interesting work. The hand-winding work, according to her testimony, which she performed in June and July on the ABL-62 component was less complicated, therefore, less interesting and more arduous work.

According to Bowers, she was told that she had to wear safety glasses when another employee suffered an eye injury while doing tinning work. Bowers did not recall when this incident occurred. Lines testified that this incident occurred in December and the employee

⁸³ The refusal to transfer Winter to the night shift was not alleged in the complaint. However, during the hearing counsel moved to amend the complaint to allege this refusal as a violation. The motion was granted.

⁸⁴ Initially, counsel for the General Counsel stated that the refusal to transfer Bowers to the night shift was not being alleged as a violation. Subsequently, it was her position that the refusal to transfer was discriminatorily motivated and this refusal contributed to Bowers' decision to leave the employ of the Company.

⁸⁵ Parisi supports Bowers' testimony that after May Bowers did not do machine-winding work but did more tinning work.

⁸⁶ Bowers admitted that the amount of machine winding she did decreased in March before the advent of the Union.

who was injured was Lilly Padilla. Thereafter, according to Lines' testimony, she insisted that employees wear their safety glasses while tinning and in early 1981 she posted signs to that effect. Lines claimed that she had trouble with several employees, including Bowers, about wearing the safety glasses.

Bowers also testified that, beginning in January, Lines told her to tie her hair back when she was working on the machines and she continued to caution her about this matter during the entire time she was employed. Bowers stated that she had not received a warning about either problem. Lines testified that Bowers did receive a verbal warning on June 25 both for her failure to tie her hair back and her refusal to wear safety glasses. It does not appear that other employees received similar warnings.

In July Bowers' work performance was reviewed. According to Bowers, Lines told her that her work was "down" and her time on the tinning work had increased.⁸⁷ Lines testified that she criticized Bowers' performance in general, including her inability to graduate to the more complicated machinery, and it was this fact that caused her to give Bowers a lower pay increase.

According to Bowers, due to the unsatisfactory review of her work performance, her assignment to less desirable work, and the general tension in the plant she decided in July to return to school on a full-time basis and on August 4 she requested a transfer to the night shift.⁸⁸ This request was denied, allegedly, because night-shift work was not available.

Bowers testified that on September 30, she saw an advertisement for job openings at the Company and called to ask for a job. Bowers claimed she spoke with Diana Gloumakoff, who told her to call later because Clifford was not available. On direct-examination Bowers testified that later that day, she called, identified herself, and spoke to a person she assumed was Lorraine.⁸⁹ However, on cross-examination, Bowers testified that when she called and identified herself she spoke to "whoever was on the other end." This person questioned her about which shift she wanted and, when she replied that she was interested in the night shift, she was told that it had been filled. Bowers admitted that she did not know if the person to whom she spoke was, in fact, Lorraine.

The records reveal that no other employees were hired between September 30 and October 7 when one employee, a woman, was hired for the night shift. On October 29 Bowers saw an advertisement for openings at the Company. Bowers, initially, testified that she called, spoke to Lorraine,⁹⁰ identified herself, and asked about

what shifts were available and, Lorraine told her all shifts were available. When she asked for the night shift, she was told it was filled. Bowers' testimony on direct examination was not in accord, either with the statement that she gave to the Board agent during the investigation, or with the testimony she gave on cross-examination. Bowers' statement did not mention that she identified herself; it states only that she thought Lorraine recognized her voice. Further, both the statement and her testimony on cross-examination establish that the person she spoke to told her that the only shifts available were morning and afternoon shifts and advised her to come in for an interview. According to her testimony, when she heard that there were only day shifts available, she did not bother to seek an interview.

X. HELEN UNDERWOOD

Underwood began her employment with Respondent in September 1980. The record reveals that she attended the union meetings on April 13 and 16 and signed an authorization card for the Union on April 14. She was one of the employees who, together with union representatives, sought recognition on April 27. Counsel for the General Counsel contends that because of her union activities Respondent issued a warning to her on April 17 for talking, issued a warning on June 10 and August 13 for an alleged abuse of bathroom privileges, gave her one of the lowest wage increases in July, and reneged on a promise to give her vacation pay in advance.⁹¹ This conduct caused Underwood to become angry and to curse her supervisor. Respondent seized on this alleged improper conduct as a pretext to discharge Underwood, although it had not discharged other employees for similar conduct.

Underwood testified that Lines had observed her turned around and talking to other employees prior to April, but had not reprimanded her for this conduct. Other employee witnesses and Ella Parisi testified while employees were permitted to talk to employees who sat on either side of them while working, they were not permitted to turn around to talk while their machines were in operation. Parisi claimed that prior to April she had spoken to Underwood on numerous occasions about turning around to talk to employees behind her, but Underwood ignored her directions. Parisi stated that she reported these facts to Lines before April but Lines failed to reprimand Underwood. In May or June, according to Parisi, she had occasion to speak again to Underwood about turning around and talking on two occasions on the same day, but Underwood again ignored her instructions. Parisi reported this incident to Lines. Underwood admitted that this incident occurred but she claimed that it was in June. Lines testified that it was on April 17 that Parisi reported to her that Underwood was turning around talking and had refused to follow her instructions. When Lines went to speak to Underwood she observed that once again Underwood was turned around

⁸⁷ Bowers claimed that this was the first time that Lines had criticized her work performance.

⁸⁸ In the affidavit secured during the investigation, Bowers stated that she quit work to return to school. She also stated that she left the Company because she was working on the solder pots all the time. The records fail to reveal that Bowers was working on the solder pots to a greater extent in July than she had throughout her employment.

⁸⁹ The record indicates that Respondent had an employee, Lorraine Hampton. Hampton did not testify and her status is unclear from the record.

⁹⁰ Bowers still assumed the person she was speaking to was Lorraine, but she did not actually know who it was she was speaking to during this call.

⁹¹ Initially it was the position of counsel for the General Counsel that the Company had treated Underwood differently with respect to her vacation pay.

talking to other employees. Lines directed Underwood to report to the office and, during the meeting that followed, she told Underwood that she was to follow Parisi's directions, she was not allowed to talk to employees behind her, and she was to consider this conversation as a verbal warning.⁹²

Underwood claimed that on June 3, the day of the election, Jansen spoke to her and told her that although she had signed a card for the Union it did not mean she had to vote for the Union. The statement secured from her during the investigation did not mention that Jansen referred to her signing a card for the Union. According to that statement, Jansen told her that she did not have to vote, if she did not want to vote, but he hoped that she would vote against the Union.

Underwood claimed that before April the Company did not have rules concerning the use of the bathroom facility. In fact, according to her testimony, she used the facility four or five times a day, for about 10 to 15 minutes per visit. In addition, at times she went to the bathroom with other employees including Millian, Winter, Doreen, and Cathy Conlin. According to Underwood's testimony, the first time anyone spoke to her about being in the bathroom was in April when Parisi told her she was in the bathroom for too long a period of time. Underwood recalled that it was in June that Lines started to make general comments to employees about being in the bathroom, and on June 10 Lines told her she was abusing the bathroom privileges and directed her to leave the bathroom. According to Underwood, she told Lines that she would leave when she was finished and Lines then told her she was to consider Lines' comments to her as a reprimand. Underwood testified that this was the first time that Lines had spoken directly to her about the time she spent in the bathroom. According to Lines, the issue of Underwood's abuse of the bathroom privileges arose during a conversation she had with her on June 10 about another subject matter, her use of personal days. Lines claimed that, prior to her conversation with Underwood on June 10, she had noted that Underwood was in the bathroom on June 10 on 5 different occasions between 8 a.m. and 1:30 p.m. for a total of about 60 minutes. Lines then warned her about her excessive use of the bathroom facilities. Underwood agreed that on June 10 she was in the bathroom on four occasions between 8 a.m. and 1:30 p.m.

Lines had discussed with Underwood her lateness and absence record during the January review of her work performance. Although Underwood's record with respect to lateness and absence was not good, Underwood had received a 35-cent-per-hour increase. It appears that this increase was more than that given to some employees and less than that given to other employees. In July when Underwood's performance was reviewed again, she was given only a 10-cent-per-hour increase, the same amount of an increase given to Bowers and Millian.⁹³

Lines attributed the lower increase to Underwood's lateness, absences, and lowered production. The record reveals that during the period from January to June 1981 two employees, Anthony Calvagno and Carol Altwein, were late 17 and 16 times respectively, and Altwein was absent twice while Underwood was late 10 times and absent 3 times. Further, Parisi testified she had not observed any difficulties with Underwood's work after April.

On August 13 Underwood received a written warning about her abuse of the bathroom privileges. According to records prepared by Rissman, Underwood had been in the bathroom on August 11 on four occasions for a total of 70 minutes and on August 12 she was in the bathroom on four occasions for a total of 46 minutes, in addition to her normal break periods.

Underwood claimed that she told Lines on August 26 that she planned to take her vacation on September 3, 8, 9, 10, and 11, and Lines reminded her that Monday, September 7, was a holiday. Underwood, on hearing this and believing that if she did not work on Tuesday, September 8, she would not be paid double pay for the holiday, decided to change her vacation schedule to September 9, 10, 11, and 14. The result of this decision was to divide her vacation into 2 pay periods. Underwood did not ask Lines about whether she could receive her vacation pay in advance but she claimed that she spoke to Diana Gloumakoff on August 27 and was assured that she could receive her vacation pay, in advance, on September 9. Gloumakoff denied making such a promise. On September 9 Underwood found that her vacation pay had not been included with her regular check. Respondent witnesses testified that the Company had a policy of paying employees their vacation pay in advance if employees took a full week's vacation, but it did not make such a provision when employees took less than a full week's vacation. Underwood, when she changed her vacation schedule, had in effect not taken a full week's vacation in the same week. It appears that the policy was not a rigid one, and could have been changed provided that an employee requested a change at an appropriate time. This, Respondent contends, Underwood did not do. Lines, Clifford, and another management representative, Mike George, attempted to explain the policy to Underwood but she refused to listen. Underwood became extremely upset and used vulgar language to Lines, Clifford, and George in the reception area and then left the building.⁹⁴ Clifford, after discussions with the labor consultants, sent a letter terminating Underwood on September 11.⁹⁵ Although counsel for the General Counsel alleges that other employees had cursed supervisors and had not been discharged it does not appear that these statements were made directly to the supervisors in the same manner in which Underwood made her comments.

⁹² Lines prepared a memo on this incident which is dated April 17 and which was signed by Parisi.

⁹³ The other employees received increases ranging from 15 cents to 20 cents an hour.

⁹⁴ Underwood testified that she was aware that the use of vulgar language was grounds for discharge.

⁹⁵ MacMillen, earlier that day, had been terminated by Clifford because she had cursed him during a discussion about vacation pay. MacMillen was not included in the complaint.

XI. CAROL POTTS

Carol Potts commenced her employment in September 1980 as an assembler. In November 1980 she became a shipping and receiving clerk, a position which she viewed as a promotion. According to her testimony, she signed a union authorization card on April 14 and attended union meetings in May. In addition, she wore a union button and the union T-shirt⁹⁶ and at a company meeting held "right before the election" she raised issues relating to general working conditions in the plant.⁹⁷ The counsel for the General Counsel contends that, because of these activities, Respondent's attitude to Potts changed, she was supervised more closely, restricted in her movements, issued warnings about errors previously "treated lightly," and finally terminated. Respondent contends that a series of errors in a relatively short space of time caused her termination.

It is undisputed that Potts and Lines, during the first months of her employment, had a friendly relationship and that at some point that relationship changed. Potts, initially, was not on good terms with other employees due, she contends, to her role as a messenger for Lines. The employees resented receiving instructions from Potts and this caused her to become isolated from the other employees. Potts claimed that she discussed this problem with Lines on numerous occasions before May, but without success. Once she started to wear the union button, Lines ceased her friendly relationship and began leaving notes for her relating to her assignments.⁹⁸ Lines testified that she became aware of the problem that Potts was having with other employees in the spring of 1981 and decided to put their relationship on a more "business-like" basis.

According to Potts, when she was hired she was trained by her predecessor for about a week and, thereafter, she performed her duties with minimal supervision, notwithstanding her limited experience and the numerous items either received or shipped by the Company. Potts also claimed that prior to May Lines did not give her instructions with respect to how, or in what order, she should do her work. Potts did admit that, prior to May, Lines was in the shipping area frequently and that about 50 percent of the time the discussions they had were related to her work. However, she claimed that Lines' visits to her area increased sharply after she wore the union button and, further, that she was supervised more closely in July by Parisi after she received a warning about her work. Lines testified that Potts' training was an ongoing one, that she constantly checked her work, and that her supervision by Parisi after July was attributable to the fact that Parisi became material supplies supervisor in July and Potts then was under her direct supervision.

⁹⁶ Potts claimed that she began to wear the union button in May but the record establishes that the buttons were worn for the first time after the election in June.

⁹⁷ Clifford recalled that at the meetings about the new company handbooks, which were held in late April and early May, Potts insisted on discussing matters unrelated to the handbook.

⁹⁸ The change in attitude and the restrictions on her movements were not alleged as violations but were offered to show animus.

Due to her position as a shipping clerk, Potts had access to the front office. It is conceded that this changed, although the precise date of the change is unclear. Clifford testified that in March he instructed Lines to speak to Potts about going through his office. Potts admitted that, well before the advent of the Union, Lines told her not to use Clifford's office as a route to the front office and she had followed these instructions. While it appears that Potts was cautioned about going through Clifford's office prior to the appearance of the Union, her access to the front office, in general, was not restricted. Jansen testified that Potts had on occasion also used his office before April or May as a route to the front office but this had happened on an infrequent basis. He claimed that after April 27 Potts constantly came through his office and he observed her reading material on his desk and he concluded that she was "spying" on him for the Union. Jansen gave instructions that Potts was not to be allowed in the front office and he placed the time he gave these instructions as sometime after the election. Lines also testified that Potts was restricted after April or May when Lines discovered that her Day Timer book⁹⁹ was missing and Potts had been observed looking at material on her desk.¹⁰⁰

Potts had made work-related errors prior to June, but she claimed that she had not been reprimanded for them, although she admitted that Lines had cautioned her to be more careful. Commencing in late June Potts began to commit a series of errors for which she did receive disciplinary warnings. The first incident occurred on June 29 when Potts shipped the wrong components to a customer, Exide Electronics. Potts did not dispute that she shipped the wrong component but she explained that the component she shipped and the one requested were very similar, although they were marked with identifying numbers. The Company was unaware of the error until notified by the customer sometime after the error was committed. On July 17 Potts transposed labels on two shipments and sent the wrong parts to two customers, National Mini Services and G.C. Controls. Potts claimed that she had made this type of mistake previously and had not been reprimanded. The Company became aware of the error on June 29 and the error on July 17 at about the same time, and on July 21 Potts received a written warning concerning both errors and was told this would be her final warning.¹⁰¹ Prior to July 21, Potts had been warned verbally on July 17 concerning a mistake she had made cutting leads on the ABL-62 components. Potts claimed that she cut the leads in accordance with instructions she had received from another employee at Lines' direction. Lines testified that Potts had been given a ruler marked at 2 inches to indicate the length the

⁹⁹ A book to record daily events.

¹⁰⁰ Clifford testified that sometime in March Lines mentioned to him that Potts was acting "cutsie." Jansen and Lines also testified that Potts began to act "cutsie," although they place the change in her attitude as after April. Potts testified that when she observed that management representatives were becoming cool to her, she decided to follow her mother's advice and "kill them with kindness." She exhibited the same type of "too-sweet" attitude as a witness.

¹⁰¹ This was the first time that Potts had received a written warning.

leads were to be cut and she had failed to cut the leads in accordance with instructions.

Although Potts had been verbally warned about her work on July 17, and had received a written warning for additional mistakes on July 21, she received a 15-cent-an-hour increase on August 4. During the review Lines questioned Potts as to whether she was having any problems, apparently referring to the errors she had made, and Potts replied that she was not trying to make mistakes but she was under pressure.

Lines claimed that she terminated Potts on August 7 after she discovered that Potts had committed another error. According to Lines in the week when Potts returned from vacation she asked Potts whether part of an order for Westinghouse had been shipped and Potts replied that it had been sent. When Lines was told by Potts that the first half of the order had been sent, she asked Parisi to count the remaining components to determine whether a sufficient number had been completed to fill the second half of the order. Parisi counted the pieces remaining in the plant and concluded that there were a sufficient number to complete the second half of the order.¹⁰² Lines, on being advised of this, directed that the machine making the components be dismantled. Subsequently it was determined that the first part of the order had not been completed and that some of the components counted by Parisi for the second half of the order were needed to complete the original order. The machine to make the components had to be reassembled. Potts appeared to attribute the error to Marie Maloney, who had performed Potts' duties while Potts was on vacation in the last week of July.¹⁰³ However, Potts admitted that it was she who shipped the first half of the Westinghouse order on either the Monday or Tuesday after she returned from vacation, and she claimed that the order was complete when she shipped it. She also conceded that she told Lines that the first order was shipped. Potts testified that she became aware on Monday or Tuesday, when she attempted to fill the second order, that there were not sufficient components and she told this to Lines. While Potts appeared to attribute the error to Maloney,¹⁰⁴ her testimony establishes that she shipped the original order, and she told Lines the order was complete. The count conducted subsequently by Parisi was based on Potts' statement that the first order was complete when she shipped it.

XII. THE GENERAL WAGE INCREASE

It is the contention of counsel for the General Counsel that Respondent granted a lower wage increase in July 1981 than it had on prior occasions because it faced the prospect of having to negotiate a collective-bargaining agreement with the Union. Respondent concedes that the July 1981 increase was lower than the January 1981 in-

crease, but it claims that it was the economic situation of the Company and not the union activities of the employees that caused the change. Moreover, according to Respondent, an examination of previous years establishes that the increase given in January 1981 was unusual and not in accord with the increase granted in January and July 1980.

Jansen testified that in determining whether to grant a wage increase, he considered several factors including sales, the past and present history of expenses (including the labor and material costs), supervisory salaries, rent, etc. On direct-examination, Jansen testified that after considering these various factors, he concluded that the Company's financial picture was bleak and he told Lines, Clifford, and the employees, between April and June, that it appeared unlikely that a wage increase could be granted in July. After he discussed the matter with the labor consultants and considered their advice that he faced the possibility of more unfair labor practices, he decided to grant a wage increase. On cross-examination Jansen testified that about May 1981 he thought the Company would make a profit, although he did not believe that it would be as high as \$50,000. He also testified that on April 30, 1981, when he received the balance sheet and income statement, he thought the Company would continue to grow and he "was looking forward to a one-million-dollar-plus year." At another point on cross-examination, Jansen stated that although he perceived that there would be general economic downturn, he did not believe the Company would be "terribly affected by it," and he concluded that the Company would make a \$50,000 profit. When the administrative law judge noted the difference between his testimony on direct and cross-examination, Jansen stated that he had confused the times and that it was actually in January 1981 that he projected a profit based on the Company's ability to do manufacturing in Mexico. The Company was unable to establish a manufacturing facility in Mexico by July 1981, and the projected increase did not occur due to slowdown in orders and reduced production. Subsequently, in the fall of 1981, Respondent did make a connection with a manufacturing facility in Mexico and, therefore, Jansen thought that the Company's future prospects would improve.¹⁰⁵

The records establish that in January 1980 the range of the wage increase was from 0 cents to 30 cents an hour divided as follows: two employees, no increase; two employees, 5 cents an hour; four employees, 10 cents an hour; nine employees, 15 cents an hour; nine employees 20 cents an hour; six employees, 25 cents an hour, and three employees, 30 cents an hour. In July 1980 the range of the wage increase was from 10 cents to 30 cents an hour divided as follows: 5 employees, 10 cents an hour; 5 employees, 15 cents an hour; 12 employees, 20

¹⁰² Parisi prepared a memo, at Lines' direction, in connection with this error. Parisi's memo states, "According to Carol the previous week's shipment had been sent out."

¹⁰³ Potts claimed that when she returned from vacation she found a "mess."

¹⁰⁴ Potts stated that she did not "blame" Maloney but the thrust of her testimony was that Maloney was somehow responsible although it was Potts who shipped the order.

¹⁰⁵ The Company had started a manufacturing operation, using Mexican employees and facilities, in about 1979. However, the person with whom Jansen had been doing business died and Jansen did not start manufacturing again in Mexico until February 1982. There was some testimony concerning the closing or relocation of the Long Island plant, but it is not entirely clear that the entire facility was closed or would remain closed.

cents an hour; 8 employees, 25 cents an hour; and 1 employee, 30 cents an hour. In January 1981 the wage increases ranged from 10 cents to 45 cents an hour divided as follows: 10 employees, 10 cents an hour; 3 employees, 15 cents an hour; 6 employees, 20 cents an hour; 3 employees, 25 cents an hour; 3 employees, 30 cents an hour; 6 employees, 35 cents an hour; 5 employees, 40 cents an hour; and 2 employees, 45 cents an hour. In July 1981 the wage increase ranged from 10 cents to 30 cents an hour divided as follows: 3 employees, 10 cents an hour; 15 employees, 15 cents an hour; 4 employees, 20 cents an hour; and 1 employee, 30 cents an hour increase. Thus, it appears that the bulk of the employees received a 15-cent-an-hour increase in July 1981 although in the previous periods a greater number of employees received increases ranging from 20 cents an hour to 30 cents an hour.

XIII. DISCUSSION

This case presents credibility issues because witnesses frequently testified to different versions of the same events. An examination of numerous exhibits, lengthy transcripts, and my observation of the witnesses leads me to the conclusion that some of the allegations of the complaint have been sustained; with respect to others the evidence was insufficient to warrant a conclusion that Respondent violated the Act.

A. The April 17 Incident

Although Gloumakoff did not testify about this incident, I do not credit Millian's version of the conversation. Winter was present when Millian and Gloumakoff met on that day. Winter testified that after the three employees said hello to Gloumakoff Millian left and it was she who remained talking to Gloumakoff. According to Winter, the only statement that Gloumakoff made was to her and he told her he was angry because she was distributing union authorization cards. Based on my observation of Winter, I credit that testimony. As will be described, Respondent reacted to the union activities of its employees with a series of coercive acts and Gloumakoff's expression of anger to Winter for distributing union authorization cards must be considered in light of Respondent's conduct. The statement was not retracted. In view of these circumstances, I find that this statement was designed to coerce Winter into abandoning her support for the Union and, therefore, violated Section 8(a)(1) of the Act.¹⁰⁶

B. The Jansen-Aiello Incident

Based on my observation of Aiello, I credit her testimony that Jansen interrogated her about her union sympathies in early June and indicated to her his belief that Sciarpetletti was responsible for the Union's presence. Notwithstanding Jansen's retraction of his question about Aiello's sympathies, I find the interrogation to be coercive. Jansen was the company president and he had made known to employees his antiunion attitude at sev-

eral employee meetings before he interrogated Aiello. The interrogation took place in Jansen's office and he placed Aiello in the position of having either to admit or deny knowledge concerning not only her activities but those of Sciarpetletti. At this point in early June, Aiello was aware of Respondent's reaction to the union activities of other employees. It was in this climate that Jansen interrogated Aiello. Any interrogation about an employee's union sympathies contains the danger of coercion.¹⁰⁷ Although the interrogation may not be made in the context of threats it can instill fear in the employees.¹⁰⁸ In the instant case, where the interrogation was made in the context of other unfair labor practices it clearly is coercive and in violation of Section 8(a)(1) of the Act.¹⁰⁹

C. Jansen's Employee Meetings

Sciarpetletti's claim that Jansen stated at employee meetings, held in late April and early May, that negotiations would begin from "square one" is not supported by the record. Millian did not recall Jansen using that particular expression and the other employees did not testify that such a statement was made. In these circumstances, I do not find that this allegation of the complaint has been sustained.

D. The More Stringent Enforcement of Work Rules

Lines conceded that she began to require employees to return from their break periods promptly and also to remain at their work stations until quitting time, contrary to past practice. She claimed that it was necessary to institute these changes because of a breakdown in discipline, which occurred sometime around May or June. This record does not support her assertion. Lines' testimony was refuted not only by all the employee-witnesses and Parisi, but also by Jansen. Jansen testified that although there had been some unrest among the employees for a few days around the time of the election, it quickly subsided. Accordingly, I do not find that there had been a breakdown in discipline which required a stricter enforcement of rules. Rather, I find that these changes were instituted in retaliation for the employees' union activities and, therefore, these changes constitute a violation of the Act.¹¹⁰

E. Dorian Millian

Millian was reprimanded on numerous occasions about her work performance prior to April 6 or 7 when she contacted representatives of Local 1922. Millian attributed these reprimands to a comment that she alleged she made to Jansen about a union in late January. Apart from the fact that a charge was not filed about the reprimands she received between January and April 6, 1981, and the additional problem of the impact of Section 10(b) on Respondent's alleged actions in that period, it is evi-

¹⁰⁶ *Jacoba Marti & Sons*, 264 NLRB 30 (1983); *South Texas Linen Service*, 250 NLRB 1406, 1410 (1980).

¹⁰⁷ *Texas Instrument v. NLRB*, 336 F.2d 128, 133 (5th Cir. 1964).

¹⁰⁸ *Fruehauf Corp.*, 237 NLRB 399 (1978).

¹⁰⁹ *Beck Studios*, 260 NLRB 292, 296 (1982).

¹¹⁰ *H.B. Zachry Co.*, 261 NLRB 681, 687 (1982); *University Townhouses Cooperative*, 260 NLRB 1381 (1982).

dent that the warnings Millian received between January and April were due to her conduct and not to any animus on the part of Respondent.¹¹¹ I have come to this conclusion because I do not credit that Millian made the statement that she claims she made to Jansen. I base this conclusion, not only on my observation of Millian, but on the fact that the two affidavits secured from her during the investigation of the case do not contain any reference to such a statement. Further, Millian admitted that she recalled that she made such a statement only when she was asked by counsel, during the preparation for the trial of this case, to account for the various warnings received by her prior to her contact with the Local 1922 representatives. Moreover, Millian did not deny that in both reviews of her work performance prior to April 6 her work was criticized, and she received an increase lower than that given to other employees. Millian also did not deny that there had been a problem with her work, although she attributed the error to sabotage by other employees. This record fails to reveal, and Millian did not explain, why other employees would engage in such acts against her.

Millian received two more warnings on April 6, one related to her absence from work without permission on April 3, and the other to an error that she made on a component prior to April 6. These warnings also predated Millian's activities on behalf of Local 1922. In view of my failure to credit that Millian made the statement she claims she made to Jansen in late January, I do not find that the warnings which were issued to Millian between January 1981 and April 7, 1981, were due to her alleged protected concerted or union activities.

Millian was disciplined on April 23 for miscounting P-1 coils.¹¹² It appears to be Millian's contention that she was disciplined on that date either for her union activities, Lines, dislike of her, her hand injury, or all three. This record fails to reveal that on April 23 the Company was aware of Millian's union activities. The only employees at the April 13 and 16 union meetings were the individuals involved in this proceeding, according to their testimony.¹¹³ Further, Millian's claim that Gloumakoff told her on April 17 that she was an "asshole" for joining the Union was not supported by Winter who was present during the conversation between Gloumakoff and Millian. I do not find, based on this record, that the April 23 warning was issued to Millian because of her union activities. Accordingly, I find this allegation of the complaint has not been sustained.

The record reveals that Respondent was aware of Millian's union activities on April 27. On about May 5, Millian again received a warning about her work on a P-1 component. Millian admitted that it was she who discovered the problem on the component when she was working on it and that it was she who brought it to management's attention. She also admitted on the warning

notice, issued in connection with this error, that it was her mistake. Despite these admissions, Millian claimed that it was Lines who was responsible for the problem because of the way she inspected the piece. Millian also claimed that other components had been damaged before and employees had not been disciplined. While it may be true that the Company did not always issue a warning when an employee made a mistake, it cannot be said that the Company had never issued a warning before April 6. Millian had received several warnings or reprimands about her work before April 6. Accordingly, I find that this warning, which was issued to Millian, was due to her work performance and was not issued as a result of her union activities.

Millian attempted to organize the night-shift employees in early May at the company premises and on May 8 she participated, as a union representative, in the conference held at the Board to arrange the details for the election. Within a few days of these events, Millian was assigned to an area designated in the hearing as "lab far corner." Although the area was neither as "good or bad" as each side attempted to portray it, it was, admittedly, an isolated area. Millian, allegedly, was assigned to that location because she talked too much and disturbed other employees. It is admitted that this was the first time that Millian was isolated, although Lines testified that she had spoken to Millian about talking on several occasions before May. Millian remained isolated in "lab far corner" between May and August. Lines admitted that no other employee was isolated in this fashion, although she also had problems with other employees talking during working hours. Respondent contends that it continued to keep Millian isolated, despite her complaints, because she continued to talk too much. It is difficult to understand how Millian could have talked with other employees when she was isolated from the other employees. I do not credit Respondent's explanation for its action, rather, I find that Respondent imposed this onerous working condition on Millian because of her activities on behalf of Local 1922. Therefore, I find that the assignment was violative of the Act.¹¹⁴

In addition to isolating Millian in "lab far corner" Respondent, after May, ceased to assign Millian to the more skilled machine-winding operations and assigned her to the less skilled tasks. Respondent claimed that it changed Millian's work assignment because of her slow production on the machine-winding operation. Although Millian's time on the winding operation was the highest it had ever been on May 5, it was lower on May 4 than it had been throughout March and April, and on May 1 it was lower than it had been on March 20. Respondent, in support of its contention that it changed Millian's assignment because of her slow production, compared her winding time with that of Rissman. Rissman, admittedly, performed the machine-winding operations at a greater speed than Millian. However, Respondent was aware of the difference between the two employees in early April but, nevertheless, it continued to assign the machine-winding work to Millian until May. It was also in May

¹¹¹ Millian, as noted, also claimed that she received the various warnings between January and April 6 because Lines was anti-Semitic and because of a claim filed by her about her hand injury.

¹¹² Millian, when reprimanded about an error, usually attributed the error to other employees or to sabotage of her work by other employees.

¹¹³ It is unlikely that these employees would have reported Millian's union activities to Respondent.

¹¹⁴ *South Nassau Communities Hospital*, 262 NLRB 1166, 1172 (1982).

that Millian was assigned to "lab far corner." I do not credit that Millian's work assignment was changed because her production was lower than Rissman. Rather I find that the assignment was changed because the machine-winding operation would have required Millian to be on the floor with other employees, a situation which Respondent sought to avoid, as evidenced by its assignment of her to "lab far corner." Accordingly, I find that the change in Millian's duties was motivated by her activities on behalf of the Union, and, therefore, constitutes a violation of Section 8(a)(3) and (1) of the Act.¹¹⁵

Lines conceded that the company policy concerning the use of the bathroom facility had been a lax one prior to January, but in January, when employees began abusing the privilege, she discussed the problem with the labor consultants and they advised her that she could enforce a stricter policy within certain limits. Parisi supports Lines' testimony that there was stricter control over the use of the bathroom facility before April. It does not appear that any employee was disciplined for abusing the privilege, or that Lines maintained records with respect to the use of the facility until June 2, the day before the election. On that day the only employee whose time in the bathroom was recorded was Millian's. The records also establish that only Millian's time was recorded on June 3 and 4. On June 9 Lines claimed that she recorded that Millian was in the bathroom for 50 minutes and on June 10 for 71 minutes. Lines testified that she spoke to Millian on June 10 about her time in the bathroom, but Millian denied this testimony. Lines claimed that she also recorded Millian's time in the bathroom on June 15 and 16; in fact, she claimed she "chased" Millian out of the bathroom. Millian again denied that Lines spoke to her or "chased" her out of the bathroom on June 16. As noted, two memos were introduced with respect to Millian's alleged time in the bathroom for June 15 and 16. Lines testified that she prepared both documents and both documents referred to Millian. The two documents contain different times with respect to when Millian was in the bathroom on June 15 and 16 and only one of the documents states that Lines "chased" Millian out of the bathroom on June 16. There was no explanation offered as to why there were two memos, why the memos contained different times, or why one makes reference to Lines chasing Millian out of the bathroom and the other does not. In the face of the obvious differences in the memos, and the lack of explanation for the two documents, it is difficult to credit that these documents reflect Millian's time in the bathroom on June 15 and 16. Further, these documents also cast doubt on the truthfulness of all other documents prepared with respect to Millian and other union supporters in connection with the alleged abuse of bathroom privileges.

The purpose of recording the bathroom time, according to Respondent witnesses, was to prevent an abuse of the privilege. Despite this purpose, neither Lines nor Rissman announced to the employees that they were being observed and that excessive time in the bathroom would result in disciplinary action being taken against

them. In addition, although Rissman claimed that she was not instructed to observe any particular employee, the evidence establishes that the initial records she claimed she maintained related only to the known union supporters: Millian, Bower, Underwood, and MacMillen.¹¹⁶ Rissman stated that she selected these individuals because she had observed their conduct prior to August and had noted their abuse of the bathroom privilege. Both Lines and Clifford testified that there had not been an abuse of the privilege by an employee in the month of July and, therefore, records were not maintained for that month.¹¹⁷

I do not credit Respondent's assertions that Millian violated the bathroom privileges as alleged in its various documents, or in the testimony of Lines, Rissman, and Clifford. Rather, I find that these warnings were issued to Millian because of her union activities and, as such, they are violative of the Act. In view of my finding concerning these warnings, I also find that the three-day suspension issued to Millian because of her alleged abuse of the bathroom privilege constitutes a violation of the Act.¹¹⁸

Millian's claim that Respondent changed her vacation schedule in order to harass her for her union activities is not supported by the evidence in the record. Millian admitted that she made changes in her vacation schedule in July without any difficulty. Further, Millian's testimony with respect to the document she claimed Lines used to record her vacation schedule was contradictory and evasive. Accordingly, I find that this allegation in the complaint has not been sustained.

I do not credit the reason advanced by Respondent for the lower wage increases it granted to Millian, Bowers, and Underwood. Rather, I find that they were given these lower increases because of their participation in the demand for recognition. Although Millian previously had received lower increases than other employees, this was not true for Bowers and Underwood. Moreover, both Sciarpetti and Potts, who had received warnings about their work performance, were granted the 15-cent-per-hour increase which was given to all the employees. Accordingly, I find that this conduct is violative of the Act.

In July Millian registered at a nearby community college to attend the day session and she requested a transfer to the night shift. Her request for the transfer was denied about August 7. It is undisputed that, at that point, positions were not available and, in fact, in the month of August and until about mid-September the number of employees on the night shift was being reduced through

¹¹⁵ Only these four union adherents were observed. Thus there is no way to determine whether other non-union supporters used the bathroom in the same manner. Further, the fact that Millian and Underwood admit that they were in the bathroom on some occasion on August 11 and 12 is insufficient to erase the question of the accuracy of these records, in view of the June documents.

¹¹⁷ In August, it should be noted that the appeal on the director's report was pending and a possibility of a second election existed.

¹¹⁸ *Arrow Automotive Industries*, 258 NLRB 860, 867 (1981). This record establishes that it was, primarily, the union supporters who were observed. Accordingly, I do not find that there was a restriction on the use of the bathroom facility for all the employees.

¹¹⁵ *South Nassau Communities Hospital*, supra.

attrition. Although the record reveals that Respondent did begin to hire night-shift employees in late September to do the type of work previously performed by Millian, there is no evidence that Millian at that time requested a position, nor does the record reveal that the Company had a policy of recalling former employees when positions became available. Accordingly, I do not find that the refusal to transfer Millian to the night shift constitutes a violation.

Although I have found that Respondent discriminated against Millian by its assignment of more onerous conditions of employment, by the issuance to her of various warnings concerning the use of the bathroom facility, and by granting her a lower wage increase, I do not find that these actions caused Millian to resign her position with the Company. Rather, I find that Millian had determined to attend school during the daytime and, therefore, she would be unable to work during the day. This record establishes that there were no night shift positions available when Millian sought one. My conclusion that Millian left the Respondent's employment because of her desire to attend school during the day is based on my observation of Millian and the fact that she did not change to the evening session at school, although she was aware in early August that her request for a transfer to the night shift was denied. Accordingly, I do not find that Millian was constructively discharged and I shall recommend that this allegation be dismissed.

F. Penny Sciarpelletti

It is admitted that the first time Sciarpelletti was reprimanded about her work was on April 16, and this reprimand concerned the slowdown of her production on the P-1 component. Sciarpelletti admitted that she reduced her speed on that component in late March because of her anger about her leave of absence. Counsel for the General Counsel argues that Respondent was aware of Sciarpelletti's reduced production in March, but failed to do anything about it until she became involved with the Union. According to Sciarpelletti's testimony, the only involvement she had with the Union before April 16 was a conversation she had with Millian and Winter in which they told her that they had contacted a union. There is no evidence in this record that Respondent was aware of this conversation. The first union meeting that Sciarpelletti attended was on April 16, after she had been reprimanded for her reduced production. Moreover, although Sciarpelletti's winding time increased in March, it increased to a greater extent in April. In addition, by April 16 Respondent was able to compare Sciarpelletti's winding time with that of Rissman, who had been taught by Sciarpelletti. The difference in time between the two employee was significant. Rissman, within a week or two after learning the operation, was winding the component at the rate of 77 minutes per coil, and Sciarpelletti was winding the component at the rate of 122 minutes per coil. In these circumstances, I find that the April 16 warning was issued to Sciarpelletti because of her work performance and not because of her union activities. Accordingly, I find that this allegation has not been sustained.

Sciarpelletti claimed that after she became involved with the Union both Lines and Jansen became unfriendly to her. This assertion is not supported by the record. Sciarpelletti admitted that she, initially, was angry because she was not allowed to take her leave without pay as she wanted. She testified that she soon forgot her anger with the Company. Sciarpelletti admitted that she ceased visiting Lines in her office when her request was denied and she did not return to that habit during the time she continued to be employed. Moreover, Sciarpelletti, who had been a company supporter in the earlier election, now became a very vocal union supporter. This type of conduct does not indicate that Sciarpelletti forgot the anger about the denial of her leave request.

The records reveal that Respondent representatives considered that Sciarpelletti was responsible, to some degree, for the Union. It is undisputed that Sciarpelletti was a skilled and competent employee who, basically, did the more skilled operations. However, commencing in June, Sciarpelletti began to be assigned more frequently to the less complicated work, although she did continue to do some of the same type of work that she had performed before June. Respondent's claim that Sciarpelletti was not assigned more frequently to the less skilled tasks is not supported by this record.¹¹⁹ Respondent has failed to explain why Sciarpelletti's work assignments were changed. In view of Respondent's admitted animus to the union activities of its employees, its knowledge of Sciarpelletti's activities on behalf of the Union and its failure to explain, satisfactorily, the reason for the change in her work assignment, I find that Respondent assigned Sciarpelletti to more onerous work because of her union activities and therefore violated Section 8(a)(3) and (1) of the Act.

Although, initially, Lines denied that Sciarpelletti was assigned after June to a particular location, she subsequently admitted that she did assign Sciarpelletti to a particular location because she talked too much and because she wanted her in a secluded area to do the fine-wire terminating work. I do not credit these reasons advanced by Respondent for its actions. Sciarpelletti was considered a good employee prior to her involvement with the Union. There is no evidence that Lines had problems with Sciarpelletti or reprimanded her for talking rather than working at any time. In addition, Lines failed to explain the need to isolate Sciarpelletti when she did fine-wire work after June when there had been no need to do so prior to June, although Sciarpelletti frequently performed this type of work. In sum, I do not credit Respondent's explanations for the assignment of Sciarpelletti to a particular location but find that it was in reprisal for her union activities and, accordingly, was in violation of the Act.¹²⁰

Based on this record and my observation of the witnesses, I do not find that Sciarpelletti's suspension on June 5 was caused by her union activities. It is evident from Sciarpelletti's testimony that she refused to comply

¹¹⁹ As noted above, although Sciarpelletti continued to work on some of the same components that she had worked on previously, the type of work she was assigned to do was changed.

¹²⁰ *Hall of Mississippi*, 249 NLRB 775, 779 (1980).

with a direct order of her supervisor, although Lines gave her ample time to do so. The fact that Sciarpelletti was upset at the time is not a defense to this type of conduct. Accordingly, I do not find that this suspension was due to Sciarpelletti's union activities but find that it was due to Sciarpelletti's refusal to obey a legitimate order from her supervisor.¹²¹

The record reveals that Sciarpelletti made several errors with respect to the 5802-1 component on June 15 and 16. Sciarpelletti attributed the errors that she made to the failure of Lines to give her instructions and to the faulty instructions which she had received from Parisi. It is evident from this record that the errors were due to Sciarpelletti's negligence. Parisi, who testified in support of witnesses for the General Counsel, contradicts Sciarpelletti's testimony that she had not been given instructions or that the instructions she did receive were incorrect. Although Sciarpelletti contends that she had made errors prior to this time and had not been reprimanded, the record fails to reveal that she had made several careless errors at the same time. Accordingly, I do not find that the June 17 warning was in retaliation for Sciarpelletti's union activities, but find, rather, that it was because of her work performance.

Sciarpelletti claimed that the warning issued to her and her suspension in September were due to her union activities. This claim is not supported by the record. Sciarpelletti appeared to contend that the incidents which gave rise to the warning and suspension were fabricated.¹²² I observed Belle and I am convinced, based on my observation of Belle, that she did report both incidents to Lines and that she was extremely upset by the incidents. Sciarpelletti, in fact, admitted that the second incident occurred although she characterized it as "trivial." It was apparent to me that Belle did not consider the incident to be a minor matter. In these circumstances, I do not consider that the warning and suspension over these incidents were related to Sciarpelletti's activities. Rather, I find that Lines issued the warning and suspension because of the complaints she received from another employee about Sciarpelletti's conduct.

Although I do not find that the various warnings issued to Sciarpelletti and her suspension were in violation of the Act, I do find that she was constructively discharged based on the change in her work location and assignment. Sciarpelletti was proud of her ability to do the fine-wire work and other types of complicated tasks. It was evident that she considered her assignment to the less skilled, beginner-type work and her isolation to be demeaning and not worthy of her abilities. In sum, I find that Respondent, in assigning Sciarpelletti to perform tasks below her level of ability and in isolating her from the other employees, caused her to resign her position with the Company and thereby violated Section 8(a)(3) and (1) of the Act.¹²³

¹²¹ *Pine Lumber Cashway*, 267 NLRB 955.

¹²² Sciarpelletti indicated that Belle, who was antiunion, was "used" by the Company so that warnings could be issued. There is no evidence to support that assertion.

¹²³ *Hall of Mississippi*, *supra*.

G. Debra Winter

On April 17 Gregory Gloumakoff accused Winter of distributing authorization cards for the Union. Within a short time Jansen issued a verbal warning to her for slamming a door to the ladies' room. Jansen admitted that he was upset by the noise of the door because it reminded him of another situation in the Meatcutters' campaign when union supporters slammed doors. Jansen appeared to connect door slamming with union supporters. Jansen admitted that he did not like the Unions and would prefer not to have the employees organized by the Union. It appears that Jansen was disturbed by the presence of another Union after the Meatcutters "walked away" and it was this fact, rather than the actual door slamming, that triggered his verbal warning. Accordingly, I find that the warning issued to Winter was in retaliation for her support for the Union and not because of the noise of the door and, therefore, is violative of the Act.¹²⁴

Winter claimed that Lines frequently told her after April to tie her hair back, but it does not appear that Winter received either a verbal or written warning about the problem. Therefore I do not find that Respondent violated the Act.

The evidence fails to establish that Winter was denied a transfer to the night shift for discriminatory reasons. Winter resigned on August 21 to attend school. As noted above, the evidence establishes that, at that point when Winter resigned, the employees on the night shift were being reduced by attrition. There is no evidence that Winter renewed her request for employment when jobs became available, almost a month after she resigned. In addition, also as noted, the evidence in this record does not establish that the Company had a policy of recalling employees when positions became available. In these circumstances, I do not find that the Company, for discriminatory reasons, failed to transfer Winter to the night shift and, accordingly, I do not find that she was constructively discharged and I recommend that this allegation be dismissed.

H. Judith Bowers

This record does not support Bowers' claim that her work assignment was changed due to her union activities. Bowers had performed primarily the less complicated tasks prior to April. Although the record does establish that Bowers did some machine-winding work, it appears that she performed the bulk of that work in February and, by March, the amount of time that she performed that work had decreased to a significant degree. Further, the record reveals that Bowers had performed tinning work from the start of her employment and she continued to do so after April. Bowers' assertion that she was assigned to do more tinning work after April than she had done previously also is not supported by the record. In fact, the record indicates that Bowers was doing less tinning work in August than she had done before that time. Bowers also admitted that she had per-

¹²⁴ Based on Jansen's testimony that he also reprimanded MacMillen, I find that reprimand is also violative of the Act.

formed hand-winding operations before she commenced her union activities and she continued to do this work in June, July, and August. Bowers claimed, however, that the type of hand-winding work which she had done before April was more interesting and, therefore, less arduous. The evidence in this record is insufficient to support that contention. In sum, I do not find that the work performed by Bowers was changed to any significant degree and I find, therefore, that this allegation has not been sustained.

Although Bowers claimed that she was unaware that she had received a warning in June about her failure to tie her hair back and her failure to wear safety glasses, Lines claimed that she did issue such a warning. Assuming that such a warning was issued, I find that its issuance was motivated by Bowers' union activities and was not due to a concern for safety. The record reveals that, prior to April, Lines had reminded employees to tie their hair back when they were working on the machines and also cautioned them to wear safety glasses when they worked on the solder pots. It is evident from Lines' testimony that the employees did not follow her instructions because Lines admitted that she had to speak frequently to all employees, including Bowers, about the problem. Although Lines constantly reminded the employees about these matters, she did not issue either a verbal or written warning to any employees until she issued the one she claimed she issued to Bowers in June. Lines' explanation as to why she disciplined Bowers for the same conduct which previously she had tolerated was unclear. In view of Bowers' participation in the demand for recognition, the Company's past practice of not issuing warnings for an infraction of these rules, and the lack of a valid explanation for the issuance of one to Bowers in June, I find that the warning which Lines claimed that she issued to Bowers in June was given as a reprisal for Bowers' union activities and as such constitutes a violation of the Act.¹²⁵

As stated above, the only employees who received the 10-cent-an-hour increases in July were Millian, Bowers, and Underwood, the three employees who participated in the demand for recognition. As noted, Respondent's explanation for its failure to grant the same increase to these employees, as it had to other employees, was not persuasive. Bowers, from the beginning of her employment, had been limited in her abilities. Despite this fact, she had received the same increase in January as did other employees. This record fails to establish that Bowers' work performance was different from what it had been prior to April. Moreover, as stated above, Bowers, who had not received a warning about her work performance, received less of an increase than did Sciarpetti and Potts, who had received such warnings. In these circumstances, I find that Respondent failed to grant Bowers the same increase that it had granted to other employees because of Bowers' union activities, par-

ticularly her participation in the demand for recognition. This conduct is violative of the Act.¹²⁶

The warning which was issued to Bowers on August 13 for her alleged abuse of bathroom privileges also constitutes a violation of the Act. As set forth above, all the documents concerning the alleged abuse of the bathroom privileges are suspect, not only because of the unexplained differences in the June documents relating to Millian, but because this record reveals that Respondent selected the union adherents to observe. Although Lines and Rissman contend that they recorded the bathroom times of all employees, it is evident, from their records, that they did so several days after they began maintaining records with respect to the union supporters. In these circumstances I find that the warning which was issued to Bowers was because of her union activities and, therefore, is violative of the Act.

Although I have found that Respondent discriminated against Bowers because of her activities on behalf of the Union, I do not find that she was constructively discharged. In July Bowers registered to attend the day session at a nearby school. Bowers claimed that she decided to return to school because she had received an unsatisfactory evaluation on her work performance, there was tension in the plant, and she was becoming ill from the excessive amount of tinning work she was assigned to do. Bowers' claim that she was assigned to do excessive amounts of tinning work is not supported by this record. Moreover, my observation of Bowers convinces me that she did intend to return to school and resigned only when she was informed that positions were not available on the night shift. As stated, the evidence establishes that positions were not available in August when Bowers sought to be transferred. Accordingly, I do not find that Bowers was constructively discharged.

It was evident from Bowers' testimony that she could not identify the person she spoke to about the possibility of a job in September or October. Furthermore, the affidavit submitted by Bowers during the investigation and her testimony on cross-examination clearly establish that Bowers did not identify herself when she called about a job. In addition, also based on Bowers' testimony, it is evident that Bowers was told that only day positions were available and Bowers was not interested in a day position. I, therefore, find that this allegation has not been sustained.

I. Helen Underwood

It is undisputed that Parisi spoke to Underwood on several occasions before April 6 about her tendency to turn around to talk to other employees while her machine was in operation. Parisi claimed that she reported these incidents to Lines on several occasions before May, but Lines did not reprimand Underwood for her conduct. The parties agree that, on the day that Lines reprimanded Underwood about talking to employees behind her, Parisi had spoken to Underwood earlier that day on two occasions about talking and Parisi had reported these facts to Lines. Underwood and Parisi place this in-

¹²⁵ *University Townhouses Cooperative*, supra. It is evident from this record that Lines spoke to the employees about safety measures prior to the union campaign. Therefore, I do not find that there was a stricter enforcement of these safety rules after April, except insofar as I have found the warning issued to Bowers to be violative.

¹²⁶ *Tarian Marine Co.*, 247 NLRB 646, 656 (1980).

cident in May or June. Parisi admits that she signed a memo prepared by Lines about the incident the day it occurred and this memo is dated April 17. This record fails to establish that, on April 17, Respondent was aware of Underwood's union activities. In view of this lack of knowledge of Underwood's union activities, I do not find that this warning, which was issued to her on April 17, was because of those activities, but find that it was caused by her violation of company rules.

The warnings issued to Underwood on June 10 and August 13, based on records allegedly maintained by Lines and Rissman, are subject to the same problems I have noted above in connection with similar warnings issued to Millian and Bowers.¹²⁷ Therefore I find, for all the reasons set forth with respect to the warnings issued to Millian and Bowers, that these warnings issued to Underwood were because of her activities for the Union and they are, therefore, violative of the Act.

The failure to grant Underwood the same increase granted to all other employees in July is, as noted, a violation of the Act. Respondent asserts that Underwood received this lower increase because she talked too much, spent too much time in the bathroom, and failed to improve her lateness record. Respondent was aware of Underwood's tendency to talk and her lateness record and this had not precluded it, in the past, from granting her an increase which was greater than that given to some other employees. Moreover, the evidence establishes that Underwood's record, insofar as lateness was concerned, was better than other employees who did receive the 15-cent-an-hour increase.

Counsel for the General Counsel contended, initially, that Respondent had treated Underwood in a disparate manner in connection with her vacation pay. During the hearing, counsel changed this theory and contended that Respondent had promised to give Underwood her vacation pay in advance, but, for discriminatory reasons, it had reneged on its promise. This record fails to support either contention. Rather it appears that Respondent had a policy of paying vacation pay in advance, provided the employee took a full week of vacation, otherwise employees received vacation pay only after they returned from vacation. It also appears that the policy could be changed, provided employees sought and received permission to have their vacation pay in advance, although not taking a full week of vacation. Underwood, through her failure to read the employee handbook, had divided her vacation schedule and, therefore, was not entitled to receive her vacation pay in advance. I do not credit Underwood's assertion that Diana Gloumakoff promised to have her vacation pay ready in advance. I base my conclusion on my observation of both individuals. Moreover, this record fails to establish that Gloumakoff had the authority to make such a policy change or would have acted without being authorized to do so by either

Lines or Clifford. Although the counsel for the General Counsel claims that vacation pay was withheld deliberately in order to provoke Underwood to action, which could be used as grounds to discharge her, this record does not support that contention. Rather, I find that Underwood caused her discharge by the use of obscene language to her supervisor in a public area. Accordingly, I do not find that Underwood's discharge was a violation of Section 8(a)(3) and (1) of the Act.¹²⁸

J. Carol Potts

Lines admitted that her attitude towards Potts changed and became more "business-like" but she denied that the change was related to Potts' union activities. I do not credit that denial. The difficulties encountered by Potts with other employees arose from her friendship with Lines and this had been a situation existing almost from the time Potts started her employment with the Company. Lines claimed that she first became aware of the problem in April. However, by April, Potts, through her union activities, was on a "friendlier" basis with other employees than she had been for months. Thus, if Lines' testimony is to be credited, she became aware of Potts' problem when Potts no longer had the problem.

Jansen admitted that he ordered that Potts' access to the front office be restricted because he believed that she was "spying" on him for the Union. Counsel for the General Counsel did not contend that Lines' attitude change or Jansen's restrictions on Potts were violations; they were offered to show animus to Potts. It appears from this record that it was Potts' activities on behalf of the Union which caused Respondent to change its relationship with Potts.

Although Potts claimed that she had a minimal amount of supervision prior to May, this record does not support her assertion. It is unlikely that Potts, an untrained shipping clerk, would have been permitted to pack and ship numerous orders of the many different components manufactured by the Company virtually unsupervised as she claimed, at least in part of her testimony. That this was not the case becomes evident after an examination of her entire testimony. Potts admitted that, prior to her union activities, Lines constantly was in her work area, at least 50 percent of their conversations were business related, and each week they held hour-long sessions during which they discussed her work. Thus, based on Potts' testimony and that of Lines, I find that Potts had been supervised consistently by Lines from the start of her employment and that after Parisi became her supervisor, she was directly supervised by Parisi. Accordingly, I do not find that this allegation concerning the increased supervision of Potts' work has been sustained.

Potts admitted that she shipped the wrong components to one customer on June 29, and mixed shipments to two other customers on July 17. In addition, on July 17, Potts also cut leads too short on a component. Although

¹²⁷ Although Underwood did agree that she was in the bathroom at some of the times noted for June 10, this admission does not refute the possibility that all the records relating to employees' time in the bathroom are inaccurate. Thus, her admission does not erase the possibility that other nonunion supporters were also there for the same periods of time but were not recorded. In sum, the taint with respect to Millian's records clouds all documents concerning the use of the bathroom facility.

¹²⁸ It is unclear precisely what is contended with respect to Underwood's conversation on June 3 with Jansen. However, her testimony and affidavit establish that conversation was not violative of the Act.

Potts attributed this error to faulty instructions, she did not deny that the error had been committed. Counsel for the General Counsel contends that Potts had not been given warnings previously, although she had made errors, and therefore these warnings were given to her because of her union activities. This record fails to reveal that prior to July Potts committed several errors, all at about the same time. Further, notwithstanding these warnings, Potts was granted a 15-cent-an-hour increase in August and, according to her testimony, Lines did not attempt to ascertain why she was making the errors.

Potts, in early August, again made an error which resulted in the Company having to deal with an irate customer and reassembling machinery. Although Potts attempted to shift the blame to another employee, it is clear from this record that the error was committed by Potts. Counsel for the General Counsel has established Respondent's knowledge of Potts' activities on behalf of the Union and its animus to her for those activities. Nevertheless, I do not find that Respondent discharged Potts because of these activities. Rather, I find that Respondent discharged Potts because of several work-related errors. Although it may be true that Potts had committed errors prior to this time, for which she was not reprimanded, this record does not disclose that the errors occurred constantly within a short period of time. If Respondent sought to discharge Potts, it had the opportunity to do so based on the three errors she had committed between late June and mid-July. It did not do so but, rather, it granted her a pay increase. It was only when Potts committed a fourth error, which caused several difficulties, that she was discharged. Therefore, I do not find that Potts was discharged in violation of Section 8(a)(3) and (1) of the Act.¹²⁹

K. The General Wage Increase

Respondent appears to have two positions concerning the general increase given in July. The first position is that the Company's "bleak" economic outlook determined the amount given in July. Implicit in that argument is that the "bleak" outlook forced the Company to give lower wage increases. The second argument is that the wage increases given were generally in line with increases given previously, with the exception of the increase given in January, which was unusual. These positions appear to be contradictory and they match the confusing testimony given by Jansen on this issue. I do not credit either position, nor do I credit Jansen's testimony. Counsel for Respondent has argued that the amounts given were approximately the same as those given before the union activities of the employees. An examination of the records establishes that the manner in which the raises were given was changed. The records establish that prior to July a greater number of employees received wage increases ranging from 20 to 30 cents an hour while in July all but three employees received 15 cents an hour and the three employees who were involved in the demand for recognition received only 10 cents an hour. Based on this record, I find that the manner in which the general wage increase was given

was changed, resulting in lower increases for some employees. This conduct is in violation of the Act.¹³⁰

On these findings of fact and conclusions and on the entire record, I make the following

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has violated Section 8(a)(1) of the Act by the following conduct.

(a) Urging its employee, Debra Winter, to abandon her support for the Union.

(b) Coercively interrogating its employee, Virginia Aiello, concerning her union activities.

(c) By changing the manner in which the general wage increase was granted.

(d) By a stricter enforcement of its work rules because of the union activities of its employees.

4. The Respondent has violated Section 8(a)(3) and (1) of the Act by the following conduct.

(a) By assigning its employees, Dorian Millian and Penny Sciarpelletti, to perform more onerous work because of their union activities.

(b) By assigning its employees, Dorian Millian and Penny Sciarpelletti, to isolated work areas because of their union activities.

(c) By discriminatorily issuing warnings to its employees Debra Winter, Dorian Millian, Judith Bowers, and Helen Underwood because of their union activities.

(d) By discriminatorily suspending its employee, Dorian Millian, because of her union activities.

(e) By constructively discharging its employee, Penny Sciarpelletti, because of her union activities.

(f) By granting a lower wage increase to its employees, Dorian Millian, Judith Bowers, and Helen Underwood.

5. The Respondent has not violated the Act in any other manner.

THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth above, occurring in connection with its operations described, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(3) and (1) of the Act, I shall recommend that it be ordered to cease and desist therefrom, and take affirmative action to effec-

¹²⁹ *Emenee Accessories*, 267 NLRB 1344 (1983).

¹³⁰ Although I find that the manner in which the increases were given was changed, I have not recommended that employees be reimbursed because of the difficulty of establishing which employees would have received the greater increases and the amounts they would have received.

tuate the policies of the Act. I shall recommend that Respondent post an appropriate notice. I shall also recommend that Respondent reinstate Penny Sciarpelletti to her former position of employment, and if that position is not available, reinstate her to a substantially equivalent position without prejudice to her seniority or other rights and privileges and make her whole for any loss of earnings she may have suffered by reason of its discrimination against her by payment to her of the amount of money she would have received from October 2, 1981, until the date Respondent offers reinstatement computed in the manner described in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest thereon computed in accordance with *Florida Steel Corp.*, 231 NLRB 651 (1977). I shall further recommend that Dorian Millian be com-

pensated for the earnings she lost due to her suspension with interest thereon to be computed as set forth above and that Dorian Millian, Judith Bowers, and Helen Underwood be made whole for any loss of earnings they may have suffered by reason of Respondent's failure to grant them a 15-cent-an-hour increase in July 1981.

It will also be recommend that Respondent preserve and make available to the Board, upon request, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary and useful to determine the amount of backpay and all the rights of reinstatement under the terms of the recommendation.

[Recommended Order omitted from publication.]